

SUPREME COURT

ON

CONSTITUTION OF INDIA

SUPREME COURT ON CONSTITUTION OF INDIA

(Being a comprehensive treatise on the law laid down
by the Supreme Court of India dealing with various
provisions of the Indian Constitution)

By

H. S. DOABIA B.A. (Hons) LL.B.

Formerly, Additional Advocate General, Punjab.

(Author of Law of Elections and Election Petitions, Election Manual,
Election Cases (1864-1967), Doabia's Election Reports, Law of
Preventive Detention in India, Law of Services and
Dismissals Etc.

And

T.S. DOABIA B.A. (Hons) LL.B.

Advocate Punjab & Haryana High Court

WITH A FOREWORD

By

THE HON'BLE MR. JUSTICE R. S. NARULA

JUDGE, PUNJAB & HARYANA HIGH COURT, CHANDIGARH

WADHWA AND COMPANY
LAW BOOKSELLERS & PUBLISHERS

Head Office :

45, CIVIL LINES, AGRA

Branch Office :

DHANTOLI, NAGPUR

Published by
C D WADHWA
for WADHWA & Co
45, Civil Lines Agra,

All Rights Reserved by Authors

Price Rs Thirty only

1967

S E P T E M B E R

Printed at New Chandigarh Printing Press 37-38, Sector 9-A, Chandigarh

“The law declared by the Supreme Court
shall be binding on all Courts within
the territory of India”.
(Article 141 of the Constitution of India)

FOREWORD

The name of the principal author of this compilation Shri Harbans Singh Doabia, who was till late Additional Advocate General of the erstwhile united State of Punjab, is not new to those who have taken any interest in the field of law during the last two decades. His books on election law brought out several years ago established him as an author who can successfully combine substance and knowledge in a systematic form with requisite clarity. He maintained the same high standard of authorship in his treatise on the law of Preventive Detention. So far as I am aware, the younger Doabia (Mr. Tejinder Singh), who has already crossed the threshold of a successful legal practitioner, joined his illustrious father in this line when they jointly brought out "The Law of Services and Dismissals" in 1966.

This book "Supreme Court on the Constitution of India" is the first of its kind. It was much needed in the legal market and has filled a great and conspicuous gap in the matter of availability of Supreme Court decisions on constitutional matters at one place in a systematised form. The authors have dealt with various relevant topics subject wise and appear to have made a genuine effort to digest the latest pronouncements of the highest Court in India up to almost the end of August, 1967.

The utility of the book has been substantially enhanced by collecting "Words and Phrases" under the first Chapter headed as "Interpretation". This part of the book which I have been able to examine bears testimony to the learning and succinct expression of the authors. This publication will no doubt add to the reputation of the Doabias as legal authors.

The addition of the bare text of the Constitution of India is of no small importance. I hope this compilation will soon find its proper place amongst the indispensable books in every law library. The book is bound to prove as useful to the members of the Bar as to the members of the Bench.

Chandigarh,

September 18, 1967.

(R. S. NARULA)

JUDGE

Punjab and Haryana High Court
CHANDIGARH

P R E F A C E

Many important and complicated questions regarding the interpretation of the Constitution of India have been solved by the various judgments given by the Supreme Court of India since the Constitution came into force.

The warm welcome and appreciation accorded to other law books already written by the Authors containing discussion of the case law under various heads and chapters prompted and encouraged them to adopt the same method in dealing in this book with the Law laid down by the Supreme Court of India relating to the various provisions of the Constitution. It was felt that a book of this type will be of great practical use for all concerned. In this book the relevant case law has been arranged in a systematic method. The Commentary is divided into thirty four chapters containing paras dealing with relevant topics such as Fundamental Rights, Reasonable Restrictions, Directive Principles, Citizenship, Acquisition, Preventive Detention, Power of the Legislatures to make Laws, Procedure and Law relating to Writs, Appeals in the Supreme Court, Union and State Executive, Practice, Procedure and Jurisdiction of Supreme Court of India and High Courts, Elections, Government servants, Emergency etc. which have been discussed in detail in various Chapters.

The Authors are confident that the book will be of great practical use to all concerned.

The Authors are highly thankful to Hon'ble Mr. Justice R. S. Narula, Judge, Punjab and Haryana High Court for so kindly writing The Foreword to this book.

Chandigarh,
September 20, 1967

Authors

REVIEW

By Punjab Law Reporter

"We have great pleasure in reviewing this useful publication which contains an exhaustive commentary on the Constitution of India with reference to all the decisions of the Supreme Court on the Constitution. The commentary has been written by the learned authors chapter wise. The learned authors Sh. H. S. Doabia and Sh. T. S. Doahia are not new to the legal profession. They have already written number of books on Election Law which have proved their merit. The Supreme Court stands at the epic of the legal pyramid in this country and its decisions are binding on all courts in India. The present work has divided the Subject into 34 chapters and the learned authors have devoted a chapter to interpretation of various terms, and other chapters to Citizenship, Fundamental Rights, Equality before law, Freedom of speech, Equality in Services and other freedoms, Reasonable Restrictions, Preventive Detention and Personal Liberty etc. We have no doubt that the present work shall prove indispensable to the profession and especially to those who are interested in study of the Constitution. This is a useful addition to the numerous publications on the subject. The case law has been brought upto date and many unreported decisions have been referred to. The learned authors have also appended to the book the bare text of the Constitution of India.

We recommend this useful publication to all our readers especially those who are interested in serious study of the Constitution of India and its interpretation by the Supreme Court. Members of the Bench and Bar will find it of great assistance. the paper, printing and get up of the book is excellent."

SUPREME COURT ON CONSTITUTION OF INDIA

CONTENTS

CHAPTER I

INTERPRETATION

GENERAL PRINCIPLES

PARA	PAGE
1. Introductory	... 10
2. All words to be given meaning	... 10
3. Spirit of Constitution is irrelevant	... 11
4. Intention of Legislature	... 11
5. Hardship cannot alter the meaning	... 12
6. Legislature not amending the interpretation given by courts—Legitimate inference is that the interpretation is in accordance with the intention of the Legislature	... 12
7. Notification to have force of law	... 12
8. Court is not to lay down standard for Legislature	... 12
9. Defect in phraseology, courts cannot remedy the defect	... 12
10. Reference to existing law	... 13
11. Legislative intent how determined	... 13
12. Grammatical and ordinary sense can be modified	... 13
13. Constitution to be liberally interpreted but not at the risk of language used	... 13
14. Duty of the court	... 14
15. Same meaning to be given to the same word	... 14
16. Constitution not to be construed in narrow and pedantic sense	... 14
17. Statute once declared void has not again to be shown void in every case	... 14
18. Four principles to be considered	... 15
19. Ambiguity cannot be created artificially	... 15
20. Later Act when to be used to interpret an earlier	... 15
21. Construction leading to absurdity and hardship to be avoided	... 16
22. Statute creating offence—Mensrea is essential ingredient	... 16
23. Interpretation defeating the object	... 16

Other books by H S Doabia & T S Doabia

Law Dictionary 1967	Rs 10 50
Law of Services & Dismissals 1966	Rs 20 00
Law of Preventive Detention & Defence of India Rules, 1967 (with Supplement)	Rs 20 00
Doabia's Election Manual, 1967 (In 2 Vols)	Rs 50 00
Doabia's Election Law Guide, 1967	Rs 15 00
Law of Elections and Election Petitions 1967	Rs 55 00
Supplement to Law of Elections & Election Petitions 1967	Rs 15 00
Indian Election Cases 1935-1950	Rs 30.00
Doabia's Election Cases, 1864-1935	Rs 40 00
Doabia's Election Reports 1951-1956, Vol. I	Rs 12 50
Doabia's Election Reports, ,, ,, Vol II	In Press
Doabia's Election Reports, 1957-1960	In Press
Doabia's Election Cases 1961 (Bound)	Rs 18 00
1962 (Bound)	Rs 18 00
1963 (Bound)	Rs 18.00
1964 (Bound)	Rs 18 00
1965 (Bound)	Rs 18 00
1966 (Bound)	Rs. 18 00
1967 Annual Price	Rs 15 00
Constitution of India	In Press

SUPREME COURT ON CONSTITUTION OF INDIA

CONTENTS

CHAPTER I

INTERPRETATION

GENERAL PRINCIPLES

PARA	PAGE
1. Introductory	10
2. All words to be given meaning	10
3. Spirit of Constitution is irrelevant	11
4. Intention of Legislature	11
5. Hardship cannot alter the meaning	12
6. Legislature not amending the interpretation given by courts—Legitimate inference is that the interpretation is in accordance with the intention of the Legislature	12
7. Notification to have force of law	12
8. Court is not to lay down standard for Legislature	12
9. Defect in phraseology, courts cannot remedy the defect	12
10. Reference to existing law	13
11. Legislative intent how determined	13
12. Grammatical and ordinary sense can be modified	13
13. Constitution to be liberally interpreted but not at the risk of language used	13
14. Duty of the court	14
15. Same meaning to be given to the same word	14
16. Constitution not to be construed in narrow and pedantic sense	14
17. Statute once declared void has not again to be shown void in every case	14
18. Four principles to be considered	15
19. Ambiguity cannot be created artificially	15
20. Later Act when to be used to interpret an earlier	15
21. Construction leading to absurdity and hardship to be avoided	16
22. Statute creating offence—Mensrea is essential ingredient	16
23. Interpretation defeating the object	16

PARA		PAGE
24.	Preamble not to used be when words clear	... 17
25.	Court cannot usurp the function of legislature	... 17
26.	Same expression used in different sections may be interpreted differently	... 17
27.	Words to be given sensible meaning	... 17
28.	Redundancy to be avoided	... 17
29.	Precise words to be given their natural meaning	... 17
30.	Words cannot be added	... 18
31.	Language to be given full effect	... 18
32.	Principles of harmonious construction	... 18
33.	Intention how to be determined	... 19
34.	Gaps cannot be filled	... 19
35.	Grammatical construction	... 19
36.	Express words to be construed strictly	... 20
37.	Background of a statute	... 20
38.	Harmonious construction	... 20
39.	Interpretation defeating the object to be avoided	... 21

LEGISLATIVE PROCEEDINGS

40.	Reports of drafting committee may be referred	... 21
41.	Speech made in the course of debate not helpful	... 21
42.	Statements and objects in a bill may be looked at to see the circumstances under which an act was passed	... 21
43.	Preamble	... 22
44.	Speeches not extrinsic aids	... 22
45.	Statement of objects and reasons	... 22
46.	Acceptance or rejection of amendments to a bill in the course of parliamentary proceedings does not form part of the pre-enactment history	... 23
47.	Prior history may be looked at	... 23
48.	Report of select committee	... 23
49.	Motive of Parliament	... 23
50.	Statement of minister in Parliament	... 24
51.	Wisdom of legislature	... 24
52.	Reference to legislative proceedings if valid	... 24

MARGINAL NOTES, TITLE AND PREAMBLE

53.	Marginal notes and heading of chapters	... 25
54.	Title of statute	... 25
55.	Long title if helpful	... 25
56.	Headings of sections	... 25
57.	Preamble	... 25

PARA		PAGE
58.	Preamble not to be used when words clear	... 26
59.	Preamble or title cannot make words redundant	... 26
DECISIONS OF OTHER COUNTRIES		
60.	Analogous provision in Constitution of another country not useful if the language is different	... 27
61.	American Constitutional terms not to be imported unnecessarily	... 27
62.	English decision where statute is based on English law	... 27
63.	English decisions	... 28
64.	Aid of American concepts, laws and precedents	... 28
DUTY OF COURT		
65.	Purpose of the Act to be carried out	... 28
66.	Court is not to lay down standard for legislature	... 29
67.	Court should keep the scope of enquiry narrow	... 29
68.	Court cannot re-cast provision	... 29
69.	Interpretation should not be done in vacuo	... 29
MANDATORY AND DIRECTORY PROVISIONS		
70.	Mandatory and directory provisions-General	... 29
71.	Court should determine the nature	... 30
72.	"Shall" when mandatory	... 31
73.	Use of word "may" effect of	... 30
74.	"May" may mean shall	... 30
75.	Absence of word shall not to be conclusive in deciding the question	... 31
TAXING OR FISCAL STATUTES		
76.	Taxing statutes	... 31
77.	Fiscal statutes should be express and clear	... 31
78.	Taxing statutes should be liberally construed	... 32
79.	Construction leading to evasion of tax to be avoided	... 32
80.	Conduct of tax payer how far relevant in the matter of interpretation	... 32
81.	No equity in favour of taxing statute	... 33
82.	Interpretation to be in favour of citizens	... 33
PENAL STATUTES		
83.	Penal statutes to be interpreted liberly	... 33
84.	Penal statutes-Actual meaning to be given effect to	... 33
85.	Penal statutes in general	... 33
GENERAL AND SPECIAL PROVISIONS		
86.	General and special provisions	... 33
87.	Ejusdem generis	... 31
88.	Special provision to prevail over general provision	... 34

PARA		PAGE
	COLOURABLE LEGISLATION	
89.	Colourable legislation	... 35
90.	Doctrine of fraud on power	... 36
	WARTIME LEGISLATION	
91.	War time legislation to be construed in favour of the State	... 36
	PROVISO, EXEMPTIONS AND EXPLANATIONS	
92.	Exemptions to be strictly construed	... 36
93.	Explanations-Value of	... 36
94.	Proviso is sub-servient to main provision	... 36
95.	Proviso may be substantive	... 37
96.	Proviso may be an addendum	... 37
97.	Proviso may be looked at when the main provision is ambiguous	... 37
	PUNCTUATION	
98.	Punctuations-Value of	... 38
	RETROSPECTIVITY	
99.	Amending Act when retrospective	... 38
100.	Retrospective effect	... 39
101.	Vested rights can be affected retrospectively expressly	... 39
	PARI MATERIA	
102.	Provisions not in pari materia	... 39
	PRESUMPTION	
103.	Repugnancy or conflict between two parts-Presumption is that no repugnancy was intended	... 40
104.	Presumption is in favour of validity	... 40
105.	Interpretation should be in favour of Constitution	... 40
106.	Deeming provision	... 40
107.	Legal fiction	... 40
	LEGISLATIVE ENTRIES	
108.	Interpretation of entries	... 41
109.	Entries to be liberally construed	... 41
	MISCELLANEOUS	
110.	Doctrine of liberal construction and social legislation	... 41
111.	Rule of Mechanical construction	... 43
112.	Pith and substance	... 43
113.	Procedural law-Technical construction to be avoided	... 43
114.	Procedural law are retrospective	... 44
	AMENDMENT OR REPEAL	
115.	Amendment applies to pending proceeding	... 47

PARA	PAGE
116. Repealing Act repealed by another Act-Effect	... 45
117. Illustration	... 45
118. Repugnancy	... 46
119. State how far bound	... 46
120. Severability	... 46
121. Rule of beneficial construction	... 46
122. Section may be prospective	... 47
123. Limitation	... 47
124. Sub-sections	... 47

INTERPRETATION OF RULES

125. General	... 47
126. Rule made under a statute need not be in conformity with the General law	... 48
127. Rules cannot save the Act	... 48

WORDS AND PHRASES

128. Abandoned	... 48
129. Accusation	... 49
130. Accrue and arise	... 49
131. Acquire	... 49
132. Acquittal	... 49
133. Affairs of State	... 49
134. Agricultural operation	... 50
135. Agricultural process	... 50
136. Aid	... 50
137. Allotment	... 51
138. Amend	... 51
139. Any	... 51
140. Any one of the directors	... 51
141. Any other mode of transfer	... 51
142. Appointed	... 52
143. Area	... 52
144. As it may judge	... 52
145. Assignment	... 53
146. Associated	... 53
147. As soon as may be	... 53
148. At any time	... 53
149. Avocation	... 53
150. Belonging to	... 53
151. Business	... 53
152. By or under this Act or as may be presented	... 53

PARA		PAGE
	COLOURABLE LEGISLATION	
89.	Colourable legislation	35
90.	Doctrine of fraud on power	36
	WARTIME LEGISLATION	
91.	War time legislation to be construed in favour of the State	36
	PROVISO, EXEMPTIONS AND EXPLANATIONS	
92.	Exemptions to be strictly construed	36
93.	Explanations-Value of	36
94.	Proviso is sub-servient to main provision	36
95.	Proviso may be substantive	37
96.	Proviso may be an addendum	37
97.	Proviso may be looked at when the main provision is ambiguous	37
	PUNCTUATION	
98.	Punctuations-Value of	38
	RETROSPECTIVITY	
99.	Amending Act when retrospective	39
100.	Retrospective effect	39
101.	Vested rights can be affected retrospectively expressly	39
	PARI MATERIA	
102.	Provisions not in pari materia	39
	PRESUMPTION	
103.	Repugnancy or conflict between two parts-Presumption is that no repugnancy was intended	40
104.	Presumption is in favour of validity	40
105.	Interpretation should be in favour of Constitution	40
106.	Deeming provision	40
107.	Legal fiction	40
	LEGISLATIVE ENTRIES	
108.	Interpretation of entries	41
109.	Entries to be liberally construed	41
	MISCELLANEOUS	
110.	Doctrine of liberal construction and social legislation	41
111.	Rule of Mechanical construction	43
112.	Pith and substance	43
113.	Procedural law-Technical construction to be avoided	43
114.	Procedural law are retrospective	44
	AMENDMENT OR REPEAL	
115.	Amendment applies to pending proceeding	47

PARA	PAGE
194. Export	... 71
195. Final	... 71
196. Final order	... 71
197. Finding	... 72
198. For the year in question	... 72
199. Forthwith	... 72
200. Full time	... 72
201. Goodwill	... 72
202. Goods and manufactures	... 73
203. In any case	... 73
204. In any reference	... 73
205. Import	... 73
206. Import in and export out	... 73
207. Impose	... 73
208. Incidental dispute	... 73
209. Industrial dispute	... 73
210. Industrial matter	... 74
211. Industry	... 74
212. In lieu of payment	... 74
213. <i>In matters of religion</i>	... 74
214. In other cases before the judgment is pronounced	... 74
215. In respect of	... 74
216. In the course of export	... 74
217. In the interest of public	... 75
218. In the way of his business as agent	... 75
219. Judgment	... 75
220. Judicial proceedings	... 76
221. Just and equitable	... 78
222. Jurisdiction	... 78
223. Lands	... 76
224. Law	... 76
225. Lawfully	... 76
226. Law of a State	... 77
227. Lease and lend	... 77
228. Letter of cover	... 77
229. Legislature	... 77
230. Lend and loan	... 78
231. Material witness	... 78
232. Matter	... 78
233. Matters	... 78

PARA	PAGE
153. Cargo	... 54
154. Carries on business	... 55
155. Carrying on business	... 56
156. Certify	... 56
157. Charge	... 57
158. Charity	... 57
159. Circumstances and property	... 58
160. Collusion	... 58
161. Concerned and deal	... 58
162. Conclusive evidence	... 59
163. Conditions	... 59
164. Copy	... 59
165. Constituted	... 60
166. Consumption	... 63
167. Contract of service	... 63
168. Continuous	... 64
169. Could	... 64
170. Court	... 65
171. Court immediately below	... 65
172. Court or tribunal	... 65
173. Cultivable Land	... 66
174. Deemed	... 66
175. Definite information	... 67
176. Demand	... 67
177. Demonstration	... 67
178. Detains	... 68
179. Direction	... 68
180. Discharge	... 68
181. Dismissal and removal	... 68
182. Dissolution and prorogation	... 68
183. Distinct matter	... 69
184. Election	... 69
185. Employed in any industry	... 70
186. Employment	... 70
187. Escaped assessment	... 70
188. Especially	... 70
189. Eviction	... 70
190. Except where Government otherwise directs	... 70
191. Exempt	... 71
192. Existing law	... 71
193. Expense	... 71

PARA	PAGE
274. Profess	... 86
275. Public purpose	... 86
276. Punishment	... 87
277. Purchasers's advance and deposit	.. 87
278. Purport	... 87
279. Reduction	... 87
280. Religion	... 88
281. Removal	... 88
282. Remove	... 88
283. Remuneration	... 88
284. Rendered illegal	.. 88
285. Resides	.. 88
286. Retrenchment	... 89
287. Right to practice	.. 89
288. Sale of goods	... 89
289. Salary	... 89
290. Satisfied	... 89
291. Seduction	... 90
292. Secrete	... 90
293. Seizure	... 90
294. Service of notice	... 90
295. Shall presume	... 90
296. Shop	... 91
297. Statement	... 91
298. Strike	... 91
299. Subordinate	... 91
300. Substance	... 92
301. Subject to	... 92
302. Substantial question	... 92
303. Substantial and compelling reasons	... 92
304. Taking and retaining possession	... 92
305. Temple	.. 92
306. Terminal tax	... 93
307. Trade business or commerce	... 93
308. Tribunal	... 93
309. Tribute	... 93
310. Trial	... 93
311. Tried	... 93
312. Upto not more than one	... 93
313. Vest	... 93

...	234.	Memorial and petitions	...
78	235.	Migrate	...
78	236.	Modification	...
79	237.	Modify	...
79	238.	Movables	...
79	239.	Nationality and citizenship	...
79	240.	Not in accordance with	...
80	241.	Not later than fourteen days	...
80	242.	No appeal shall lie	...
80	243.	Normal labour	...
80	244.	Obtains	...
80	245.	Occupant	...
81	246.	Occupier	...
81	247.	Office of profit	...
81	248.	Office under the State	...
82	249.	On whose behalf	...
82	250.	Or	...
82	251.	Order	...
82	252.	Ordinarily	...
82	253.	Or otherwise	...
82	254.	Other similar allowances	...
82	255.	Our Government	...
82	256.	Paid	...
83	257.	Pantb	...
83	258.	Parliament may by law provide	...
83	259.	Part	...
83	260.	Pending	...
83	261.	Person	...
83	262.	Personally	...
84	263.	Person practising before the court	...
84	264.	Permission	...
84	265.	Picketing	...
84	266.	Possessed	...
84	267.	Practice	...
84	268.	Practice and procedure	...
84	269.	Police officer	...
85	270.	Previous operation	...
85	271.	Previous years	...
85	272.	Producer and consumer	...
85	273.	Property	...

PARA		PAGE
341.	"Territory".	102
342.	"Acquired Territory".	102
343.	Territory if part of India or not, how to be determined.	103
344.	Succession of States.	103
345.	Assimilation of acquired territories.	103
346.	Creation etc. of new States.	103
347.	Rights of persons of acquired territory.	104
348.	Cession of national territory should be by legislative action.	104
349.	Territory of India.	104
350.	Territories as may be acquired—Opinion of executive binding on Courts.	105
351.	Power to cede territory is not subject to Preamble.	105
352.	Power to amend Constitution include power to cede national territory.	105
353.	Article 1 (3) (c) does not confer power to acquire foreign territories.	105
354.	Scope of Articles 2 and 3.	106
355.	Requirements of Article 3.	106
356.	Scope, applicability and effect of Articles 3 and 4.	106
357.	State includes Union Territory (Article 3).	106

CHAPTER CITIZENSHIP

358.	General.	107
359.	Domicile.	108
360.	Domicile—Burden of proof of the change is on the person who alleges it.	108
361.	Person includes natural person.	109
362.	Migrated.	109
363.	Citizen include only natural person—Position of Foreign Companies.	110
364.	Citizenship and Nationality.	110
365.	Determination of Nationality.	111
366.	Decision of Foreign Court cannot terminate Indian citizenship.	111
367.	Indian Citizen getting passport from foreign government if loses Indian Citizenship.	111
368.	Central Government to determine the question of termination of citizenship.	111

PARA		PAGE
314.	While purporting to act as public servant	... 94
315.	Wilfully	... 94

MAXIMS

316.	Actio personalis moritur cum persona	... 94
317.	Falsus in uno falsus in omnibus	... 94
318.	Nemo debet esse iudex causa propria sua	... 94
319.	Commodum ex injuria sua memo habere debet	... 95
320.	Contemporanea expositio est optima et fortis sima in lege	... 95
321.	In pari delicto	... 95
322.	Ubi remedium ibi jus	... 95
323.	Generalia specialibus non derogant	... 95
324.	Ut res magis valeat quam pereat	... 96
325.	Actus curiare meminem gravabit	... 96
326.	Silus populi est supreme les	... 96

CHAPTER II

PREAMBLE

327.	General	... 97
328.	We the People of India	... 97
329.	Sovereign	... 98
330.	Democratic	... 98
331.	Republic	... 99
332.	Fraternity	... 99
333.	Justice	... 99
334.	Social Justice	... 99
335.	Economic Justice	... 100
336.	Political Justice.	... 100
337.	Liberty.	... 100

CHAPTER III

INDIAN TERRITORY

338.	Amendment in Article 1 and its effect.	... 101
339.	Union of State.	... 102
340.	Federal Characteristics.	... 102

PARA		PAGE
394.	Law cannot be declared void retrospectively.	... 121
395.	Question of constitutionality of law can be raised only by affected persons.	... 121
396.	Against whom fundamental right can be enforced.	... 121
397.	Rights not expressed or declared as fundamental rights cannot be enforced-Spirit of Constitution is irrelevant.	... 121
398.	Directive Principles of State Policy cannot defeat fundamental rights.	... 121
399.	American decisions, when to be followed.	... 122
400.	No power to issue writ against quasi Judicial bodies in Pondicherry before merger.	... 122
401.	Only judiciary can declare the law to be void.	... 122
402.	Law includes Rules and Regulation but not constitutional Amendments.	... 122
403.	Bye Law.	... 123
404.	Firman of Ruler is law.	... 123
405.	Notification.	... 123
406.	Administrative order cannot have the force of law.	... 123
407.	Law if include Constitutional amendments.	... 124
408.	Only bad portions of law are to be struck down.	... 124
409.	Courts not to look behind the appearance etc. of the law.	... 124
410.	Presumption is that the act is valid.	... 124
411.	Article 13 is not retrospective and will not apply to pending proceedings.	... 124
412.	Law void abinitio cannot be revived.	... 125
413.	Statute void for unconstitutionality is dead and cannot be revived.	... 125
414.	Right guaranteed by a firman cannot be revived on the coming into force of the Constitution.	... 125
415.	Pre-Constitution laws.	... 125
416.	Effect of court declaring act to be void.	... 126
417.	Clause (1) & (2) of article 13 enacted by way of abundant caution.	... 126
418.	Citizen possessing fundamental-rights alone can claim relief.	... 126
419.	Directive principles cannot abridge power to legislate.	... 126
420.	Subjective opinion.	... 126
421.	Repeal and expiry of temporary acts.	... 126
422.	Retrospective effect.	... 127

PARA		PAGE
369.	Court can determine whether a person is Citizen of India or not.	... 112
370.	Indian citizen cannot be convicted under Foreigners Act, 1946.	... 112
371.	Indian citizen cannot be subjected to an adverse order under Foreigners Act.	... 112
372.	Cancellation of Registration of citizenship when can be ordered.	... 112
373.	Person if a foreigner-Matetial date.	... 112
374.	Citizenship of corporation cannot be determined with reference to its members.	... 112
375.	Article 9 does not deal acquisition of citizenship after 26-1-1950.	... 113
376.	Migration between March 1947 and January, 1956.	... 113
377.	Migration to Pakistan after 1. 1. 1947.	... 113

CHAPTER V

LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS

378.	General.	... 117
379.	Fundamental Rights under the English Constitution.	... 117
380.	Fundamental Rights are a guarantee against State action.	... 118
381.	State if include Judiciary.	... 118
382.	State includes Legislature.	... 118
383.	State includes Income-tax Department.	... 118
384.	Authority within the territory of India.	... 118
385.	Pondicherry not territory of India.	... 119
386.	Exercise of power to be in consonance with the Constitution.	... 119
387.	The fundamental rights are beyond legislative competence.	... 119
388.	Fundamental right cannot be waived.	... 119
389.	Law repugnant to fundamental rights is void.	... 120
390.	Spirit of the Constitution, irrelevant.	... 120
391.	Infringement of Fundamental Right-Law is void, exception is Article 31.	... 120
392.	Void Law applied to persons not having fundamental rights.	... 120
393.	Void Law can be made good.	... 120

PARA	PAGE
453. Article 14 covers both substantial and procedural law	... 141
454. Presumption is in favour of constitutionality	... 142
455. Reasonable classification	... 142
456. Intelligible differentia and rational relation to the object sought to be achieved	... 142
457. Basis of classification	... 143
458. What is reasonable classification	... 143
459. Classification need not be scientifically perfect and logically complete	... 143
460. Arbitrary classification	... 144
461. Section 197 Cr. P.C. is valid	... 144
462. Territorial discrimination	... 144
463. Classification based on geographical and historical grounds	... 145
464. Regional difference may justify classification	... 145
465. Pending proceedings constitute a class in itself	... 145
466. Exemption in favour of some body does not constitute discrimination	... 146
467. Different authorities enforcing different Acts which result in different treatment—Not bad.	... 146
468. Classification based on different localities.	... 146
469. Classification of foreigners	... 146
470. Possibility of discrimination	... 146
471. Discrimination should be rational.	... 147
472. Different procedure in different State, no violation	... 147
473. Territorial classification	... 147
474. Only one person may constitute a class	... 147
475. Classification of manufacturers for giving exemptions etc.	... 148
476. Vexatious litigants may constitute a class	... 148
477. Lawyers practising on original side in Calcutta constitute a class	... 148
478. Odd cases may be treated differently.	... 148
479. Persons may constitute two classes in the same State and under the same Act	... 149
480. Different classes of public servants may be treated differently in the same State	... 149
481. Fixation of maximum rent without making distinction, does not violate Article 14	... 149

PARA		PAGE
423.	Validity of law cannot be determined unless properly raised.	... 127
424.	Test for determining validity of law.	... 127
425.	Discretion of the court to examine the Constitutionality of the statute.	... 127
426.	Person directly affected can challenge the law.	... 128
427.	The question must be substantial.	... 128
428.	What is Constitutional question.	... 128
442.	Constitutionality not to be determined if case can be disposed of otherwise.	... 129
430.	The court will decide only those matters which are necessary for the disposal of the case.	... 129
431.	The petitioner must have a locus standi.	... 130
432.	The question must be raised at a proper stage.	... 131
433.	The question must be justiciable	... 131
434.	Respect for long standing legislative practice	132
435.	The injury must be to the plaintiff individually	131
436.	Waiver and estoppel.	... 132
437.	The pleading, must be adequate	... 132
438.	The challenge must be specific.	... 133
439.	Doctrine of stare decisis.	... 133
440.	Doctrine of severability or separability.	... 133
441.	The doctrine of gradual and stealthy encroachment	... 135
442.	Motive of the legislature cannot invalidate law.	... 135
443.	Construction upholding validity of law should be adopted	... 135
444.	Equality before law.	... 135
445.	The State shall not make any law-Meaning of.	... 136
446.	Retrospective effect of clause 1 of article 13.	... 136
447.	All the laws in force.	... 136
448.	Meaning of the expression 'law' and laws in force.	... 136
449.	Who can decide the law void.	... 136
450.	Government and State	... 136

CHAPTER VI

EQUALITY BEFORE LAW

451.	Meaning	
452.	Absolute equality	... 141
		... 141

PARA	PAGE
511. Construction of Article 14	... 155
512. Doctrine of Due process-Value of American decl	... 156
513. Retrospective effect of the Article 14	... 156
514. Does principle of equality before law apply to State ?	... 156
515. Article 14 applies to all persons whether citizens or not	... 156
516. Foreign company cannot invoke article 14 if Article 19 is also involved	... 156
517. Aliens	... 157
518. Who can raise objection	... 157
519. Taxation laws,	... 157
520. Power of State Government to order trial before Sessions Courts or by Jury.	... 158
521. Special courts and special procedure	... 158
522. Facility for women student etc.	... 159
523. Requirement of licences	... 159
524. Fixation of minimum fee for different classes not bad.	... 159
525. Provision relating to keeping prisoners in isolation	... 160
526. Bad and good provisions not separable	... 160
527. Arbitrary selection of sub Judges held bad	... 160
528. Discrimination should be pleaded and proved—Burden of proof	... 160
529. Termination of services without enquiry is discriminatory.	... 161
530. Filling of posts after due advertisement—No violation of equal protection of laws.	... 161
531. Two provisions in the same act—One more harsh—It will be struck down	... 161
532. Rules may fix maximum fee	... 162
533. Scheme of annuity deposit is legal	... 162
534. Three tier system is legal	... 162
535. Interviews may regulate admissions to schools	... 162
536. Junior civil servant retained and senior removed—Does not violate Article 14 if removal is the result of disciplinary proceedings.	... 162
537. Registered dealers may constitute a class	... 162
538. Temporary deprivation does not violate article 14	... 162
539. Section 87 (b) of the C.P.C. is not discriminatory	... 163
540. Statute providing quasi judicial machinery not bad	... 163

PARA		
482.	Selection of candidates getting less marks in an interview is illegal	... 150
483.	Condition applicable to all cannot be called discriminatory	... 150
484.	Gold smiths who work themselves constitute a class	... 150
485.	Factories of three years standing may constitute a class	... 150
486.	State may tax only few articles	... 151
487.	Government to decide whether a civil servant should be proceeded departmentally or otherwise	... 151
488.	Tea plantations may be treated differently	... 151
489.	Difference in procedure in settling disputes, no discrimination.	... 151
490.	Section 85 of Factories Act not discriminatory	... 152
491.	Trial by section 30 Magistrate is not discriminatory	... 152
492.	Law authorising appointment of special Magistrates	... 152
493.	Employees doing same work not entitled to get same pay	... 152
494.	Temporary Government servant	... 152
495.	Simple and short procedure for trying certain offences	... 153
496.	Right to cross examine denied will not render law bad	... 153
497.	Preventive Detention Amendment Act 1951	... 153
498.	Barred right of appeal cannot be revived	... 153
499.	Succession cannot be determined by an Act	... 153
500.	State can fix minimum of tax	... 153
501.	Requirement of capitation fee is legal	... 154
502.	Lawyer contesting municipal Election not to accept brief for or against Municipality—condition is not violative of Article 14	... 153
503.	Absorbed employees of Municipal Board cannot claim the same treatment as given to those already in government service	... 154
504.	Same class of property subjected to different tax rates—Law is void	... 154
505.	Intention of legislature is immaterial	... 154
506.	Exercise of discretion by the State	... 154
507.	Discretion given to Administrative Tribunal by law cannot be challenged	... 155
508.	Discretion of Government	... 155
509.	Direction to Income Tax officer	... 155
510.	Customs can be declared void	... 155

PARA	PAGE
573. Different laws may prevail in different parts	... 168
574. Law not applying to the entire State	... 168
575. The Orissa Motor Vehicles Act 36 of 1947 and the Orissa Amendment Act No. 1 of 1949	... 168
576. Bombay Rents Control Act 1947 etc.	... 168
577. Companies Act, Section 237	... 168
578. Punjab Public Premises Act	... 168

CHAPTER VII

PROHIBITION OF DISCRIMINATION BASED ON RELIGION ETC.

579. General	... 170
580. Article 15 (4) is not obligatory	... 170
581. Object of article 15 (4) is to remove backwardness	... 170
582. Object of First Amendment Act 1951	... 170
583. State includes Legislature and Government	... 170
584. 'Backward' and 'more backward'—Classification is bad	... 170
585. Classification based on caste only is bad	... 171
586. Appointment of Commission, not essential before passing orders under article 15 (4)	... 171
587. Exemption of Harijans and Muslims from cost of additional police force is bad	... 171
588. The authority should be within the territory of India	... 171
589. Who can question the constitutionality	... 171
590. Discrimination on the basis of place of birth	... 171
591. Excessive reservation may amount to fraud on the Constitution	... 171
592. Special provision for children and women	... 172
593. Caste	... 172
594. Only	... 172
595. Race	... 172
596. Religion	... 172
597. Electoral law	... 172
598. Requirement of capitation fee	... 172
599. Article 15 and 29 (2)	... 173
600. Discrimination	... 173
601. Discrimination should be by an authority within the territory of India.	... 173
602. Selection of candidates getting less marks is violative of article 15	... 173

PART	PAGE
541. Carry forward rule is violative of Article 14	... 163
542. Rotational system of promotion is not bad	... 163
543. Reichert value of Ghee may be different in different regions	... 164
544. Statutes saved by article 31 not open to attack.	... 164
545. Discrimination must be established by evidence	... 164
546. Qualification for membership can be imposed	... 164
547. Special method for the recovery of State dues not bad	... 164
548. Special procedure for one person only may not be bad	... 164
549. Subversive activities	... 165
550. Foreign exchange regulation	... 165
551. Section 23 (b) Foreign Exchange Regulation is valid	... 165
552. Not applying certain provision of criminal procedure etc.	... 165
553. Bihar Panchayat Raj Act	... 165
554. Rule 65 under Displaced Persons Act	... 165
555. Exemption of excise duty etc.	... 165
556. Export control order	... 165
557. Bihar Hindu Religious Trust Act	... 166
558. Arms Act	... 166
559. Madras District Board Amendment Act 1957 and Kerala Act 4 of 1958	... 166
560. Section 5 (7a) Income Tax Act is valid	... 166
561. State Monopoly	... 166
562. Proceedings taken before Constitution	... 166
563. Proceedings completed before Constitution—Action can be taken	... 166
564. Two kinds of commitment proceedings under section 207 and 207A Cr. P.C. held valid.	... 167
565. Presumption of guilt based on poison etc.	... 167
566. No waiver of fundamental rights	... 167
567. Right of trial by jury taken away qua one man only held to be bad	... 167
568. Working journalists	... 167
569. Represented through legal practitioner	... 167
570. Classification of unions	... 167
571. Slums Areas Act, 1956	... 167
572. Prohibition laws	... 167

CHARTER IX

FREEDOM OF SPEECH

GENERAL

631.	Scope of article 19	... 181
632.	Article 19 not exhaustive	... 181
633.	Rights under article not absolute	... 182
634.	Article 19 and Article 21	... 182
635.	Article 19 and Article 31	... 182
636.	<i>Rights which are not fundamental</i>	... 182
637.	Infringement of rights by private individuals	... 183
638.	Construction of laws restricting fundamental rights	... 183
639.	Article 19 available to free citizens	... 183
640.	Who is a citizen	... 183
641.	Judgment of High Court cannot violate Fundamental Rights	... 183

PRESS

642.	Freedom of speech includes freedom of press	... 184
643.	Freedom of speech includes circulation	... 184
644.	<i>Freedom of press is not higher than the one which ordinary citizens enjoys</i>	... 184
645.	<i>Excessive and prohibitive burdens cannot be placed on the press</i>	... 184
646.	Advertisement—When can be controlled	... 185
647.	Statute cannot regulate number of pages according to price	... 185
648.	Pre-censorship cannot be imposed	... 185
649.	Freedom of press includes freedom to employ staff	... 185
650.	Obscene—Meaning of	... 185
651.	Obscene literature if proscribed does not violate article 19 (1) (a)	... 185

LEGISLATORS

652.	Legislators enjoy absolute and unfettered powers inside the House	... 186
653.	Freedom of speech under article 19 (1) (a) and article 194	... 186
654.	Using defamatory slogans against Ministers does not undermine security of State	... 187
655.	Section 144 Cr. P.C. does not violate article 19 (1) (a)	... 187

	PAGE
PARA 603. Selection after advertisement does not violate article 15 ...	173
604. Discriminate against-Meaning of ...	173
605. Discrimination on the basis of religion only ...	173
606. Discrimination on the basis of sex ...	174

CHAPTER VIII

EQUALITY IN SERVICES

607. Equality of opportunity ...	175
608. Discriminate against ...	176
609. Reservation for backward classes ...	176
610. Scope of clause 2 of article 16 ...	176
611. Reservation of posts for different communities bad ...	176
612. Tenders not accepted-No violation of Article 16 ...	176
613. Different rules for different posts-Article 16 not violated ...	176
614. Discrimination on ground of descent bad ...	176
615. Only Class I officers entitled to promotion—Nothing bad ...	177
616. Retention of junior man-Not bad ...	177
617. Bar against employment qua certain persons bad ...	177
618. Reservation for scheduled caste not bad ...	177
619. Promotion-Dis-similar procedure-No violation of Article 16 when there is proper classification ...	177
620. Judicial service ...	177
621. Socially and educationally backward classes ...	177
622. Education Department ...	177
623. Termination of temporary servant on account of unsatisfactory work-Article 16 does not apply ...	178
624. Termination on account of retrenchment of senior Government servants ...	178
625. Compulsory Retirement ...	178
626. Carry forward rule ...	178
627. Rotational system ...	178
628. Selection after advertisement not bad ...	179
629. Candidates getting lesser marks cannot be selected ...	179
630. Three tier system ...	179

PARA		PAGE
681.	Right to strike	... 196
682.	Right to collective bargaining	... 196
683.	Secret association	... 197
684.	Employee cannot be dismissed for joining an Association	... 197
685.	Society cannot be declared illegal by merely issuing a notification	... 197
686.	Law may ban an association in the good of society	... 197
687.	Banks may not disclose secret reserves	... 198
688.	Right to form association can be regulated	... 198
689.	Restriction upon the freedom of association	... 198
690.	Law should lay down principles for the guidance of Executive	... 198
691.	Regulation of supply and purchase	... 198
692.	Classification of unions can be made	... 199

CHAPTER XII

FREEDOM OF MOVEMENT

693.	General	... 200
694.	Throughout the territory of India	... 200
695.	Right to move freely	... 201
696.	Subjective satisfaction	... 201
697.	Person can be evicted from market area if he does not possess a licence	... 201
698.	Police Regulations-Domiciliary visit	... 202
699.	Watch on movements	... 202
700.	Externment and internment orders	... 202
701.	Restrictions and procedural law	... 203
702.	Restrictions of entry into India	... 203
703.	Grounds of restrictions	... 203
704.	Suppression of Immoral Traffic in Women and Girls Act 1956 does not violate Article 19 (1) (d)	... 204

CHAPTER XIII

FREEDOM OF RESIDENCE

705.	Scope of Article 19(1) (e)	... 205
706.	Grounds of Restrictions	... 205

PARA		PAGE
656.	Sedition	... 187
657.	Sections 124 (2) and 505 IPC are constitutional	... 188
658	U.P. Special Power's Act, 1932, section 3 is unconstitutional	... 188
659	Punishing an employee for making a speech may violate Article 19 (1) (a)	... 188
660.	Freedom of speech is not violated when a Member of Parliament is detained under D.I.R.	... 188
661.	Right to make peaceful and orderly demonstration	... 189
662.	Strikes even if associated with speeches not protected	... 189
663.	Incitement which may lead to indiscipline not covered	... 189
664.	Section 123(5) of Representation of the Peoples Act, 1951 is valid	... 189
665.	Government should state reasons for confiscating seditious detention publication	... 189
666.	Getting a book of scientific nature published while under	... 189
667.	Religion cannot be insulted	... 190
668.	Employee can be asked not to disclose information	... 190

CHAPTER X FREEDOM OF ASSEMBLY

669.	General	
670.	Assembly must be peaceable	... 191
671.	Right to public meeting	... 191
672.	Demonstration—What is	... 192
673.	Demonstration cannot be banned	... 192
674.	Section 144 Cr. P. C. does not violate article 19(1)(b)	... 193
675.	Anticipatory restrictions can be imposed	... 193
676.	Government servants and article 19 (1) (b)	... 194
677.	Essential Services Maintenance Ordinance, 1960 does not violate article (1) (b)	... 194
678.	Processionist using defamatory language against a Minister	... 194

CHAPTER XI FREEDOM OF ASSOCIATION

679.	General	
680.	Right to trade unionism	... 195
		... 196

PARA	PAGE
731. Law interfering with rights of property should give reasonable opportunity	... 218
732. A law dealing with recovery of tax may provide special procedure	... 218
733. Mere interference with management does not violate article 19 (1)(f)	... 218
734. Punjab pre-emption Act held valid, when sons given right to pre-empt	... 218
735. Village common lands and Abadi Deh can be given to non-proprietors.	... 219
736. Import control orders.	... 219
737. Deprivation of property on subjective opinion is bad	... 219
738. Word "property" is to be liberally construed	... 219
739. Right to hold fair is property	... 220
740. Right to catch fish is not property	... 220
741. Law giving opportunity to be heard is not arbitrary	... 220
742. Industrial Disputes Act, 1947, section 10 is constitutional...	220
743. Provision preventing ejection of tenants is legal	... 220
744. Rights which a new sovereign may recognise (see para 347)...	221
745. Right should be independent	... 221
746. Right to 'purchase price' is property	... 222
747. Burden of proving that the goods are not smuggled. The rule is in the interest of public	... 222
748. Contractual rights can be varied	... 222
749. Denial to establish claim in civil court if unconstitutional	... 223

CHAPTER XV

FREEDOM OF TRADE, PROFESSION, ETC.

(See Chapter XVI on Reasonable Restriction)

750. Freedom of profession—General	... 225
751. Profession—Meaning of	... 226
752. Occupation	
753. Trade	... 226
754. Only Citizen can enjoy the right	... 226
755. Tax legally imposed cannot be called violative of Article 19 (1) (g)	... 226
756. Refusal to recognise a stock exchange does not violate Article 19 (1) (g)	... 227

PARA

CHAPTER XIV

RIGHT TO PROPERTY

707. General	...	208
708. To acquire, hold and dispose of—Meaning of	...	208
709. Property—Meaning of	...	209
710. Article 19 (1)(f) and 31 (2)	...	209
711. Article 19 (1) (f) deals with both abstract and concrete rights	...	210
712. Quasi permanent allotment is not property	...	211
713. Foreigners are not protected by article 19	...	211
714. Citizen include only natural person—Position of foreign companies	...	211

SOME INSTANCES

715. Reduction of rent does not violate article 19(1)(f)	...	212
716. Electricity Supplying Undertaking can be taken over by State	...	212
717. Acquisition under the Land Acquisition Act is not violative of freedom of property	...	213
718. A licence which does not pass any property, if taken away, does not violate article 19(1)(f)	...	213
719. Property owned by various persons—It can be sold and sale proceeds divided if it is not capable of partition	...	213
720. Offerings made to Durgah can be collected by Nazim-Khadims of Durgah cannot complain of any infringement	...	214
721. Rights of a Mahant in the property of the Math.	...	214
722. Assessee cannot claim refund of Sale Tax	...	215
723. Section 237 of the Companies Act does not violate Article 19(1)(f)	...	215
724. A Grant which is not absolute does not confer any right	...	215
725. Fixation of maximum rent does not violate Article 19(1)(f)	...	216
726. Temporary deprivation is not hit	...	216
727. Increase of licence fee from Rs. 400/- to Rs. 6,000 held legal	...	216
728. Right of share holder to borrow money from the company is not a fundamental Right	...	217
729. Pre-emption based in vicinage is ultravires of Article 19 (1)(f)	...	217
730. Implementation of scheme delayed by litigation—Enforcement of Constitution—Validity cannot be examined	...	217

PARA	PAGE
786. Who can impose restrictions.	242
787. Principles governing reasonableness	242
788. Substantive reasonableness	243
789. Procedural Reasonableness	243
790. Restriction must have a relation to the object	244
791. Restriction must not be excessive	244
792. Restriction and prohibition	244
793. Total prohibition	245
794. Retrospective effect and reasonableness	245
795. Natural justice and reasonableness	246
796. Subjective satisfaction of Executive and Reasonableness.	246
797. Unfettered discretion	247
798. Possibility of misuse	248
799. Emergency and Reasonableness	248
800. Burden of Proof and Reasonableness	248
801. Restriction and Punishment	249
802. Remoteness of restriction	249
803. Excessiveness	249
804. Restriction should be direct	249

REASONABLE RESTRICTION AND FREEDOM OF SPEECH

(See Chapter IX on Freedom of Speech)

805. General	250
806. In the Interest of	250
807. Sovereignty and integrity of India	251
808. Security of State	251
809. Friendly relations with foreign States	252
810. Public Order	252
811. Decency or Morality	256
812. Contempt of Court	256
813. Defamation	257
814. Incitement to an offence	258
815. Sedition	258
816. Revolution and war	258

REASONABLE RESTRICTION AND FREEDOM OF ASSEMBLY

(See Chapter X on Freedom of Assembly)

817. General	259
--------------	-----

PARA	PAGE
757. Licence for running a Hotel	227
758. Slaughter of cows, if can be banned totally	227
759. Advertisement can be banned	229
760. State can compete	229
761. Act regulating market areas does not infringe Article 19 (1) (g)	229
762. Provisions providing for subsidy not bad	229
763. Introduction of small taxes	230
764. Acceptance and Rejection of tenders does not violate article (1) (g)	230
765. Creating of monopoly rights illegal	230
766. There is no Right to carry on business at a particular place	231
767. Producers can be asked to sell their products to specified agencies	231
768. Provisions for improving the health of workers	231
769. Income-Tax Act, section 16, not ultravires	232
770. Acquiring land for prospecting or fixing maximum prices not bad.	232
771. Provision requiring exhibiting of minimum length of film but not fixing maximum, bad	232
772. Stocks can be frozen	232
773. Minimum wages can be fixed	232
774. Right to hold cattle fair	233
775. Private publishers have no right to get their books prescribed.	233
776. Gambling prize competition is not trade	233
777. Restriction should be imposed by law	233
778. Opening and closing hours can be fixed	233
779. Imposition of fee when valid.	234
780. Retrospective law—Reasonableness can be seen	234
781. Business—Profit motive not necessary	234
782. Non tribals cannot carry on business in tribal areas	235
783. Prostitution can be banned	235
784. Some Illustrations	236

CHAPTER XVI

REASONABLE RESTRICTIONS GENERAL

785. What is a restriction	240
----------------------------	-----

PARA	PAGE
840. Agrarian reforms	... 263
841. Debt recovery laws	... 263
842. Evacnee property	... 264
843. Essential commodities	... 264
844. Right under a contract	... 264
845. Requisition	... 264
846. Fixing prices	... 264
847. Temporary deprivation	... 264
848. Religious property	... 265
849. Taxing laws	... 266

REASONABLE RESTRICTION AND FREEDOM OF TRADE, PROFESSION ETC.

(See Chapter XV on Freedom of Trade, Profession etc.)

850. General	... 266
851. Interest of the general public, some instances	... 266
852. Competition	... 267
853. Regulation of essential commodities	... 267
854. Social welfare legislation	... 267
855. Intoxicants	... 267
856. Labour laws	... 267
857. Import Export Regulation	... 268
858. Monopoly	... 268
859. Permits	... 268
860. Licences	... 269
861. Taxation	... 270
862. State Trading	... 270
863. Nationalisation	... 271
864. Clause 8, if Retrospective	... 27

CHAPTER XVII

PROTECTION AGAINST DOUBLE JEOPARDY

865. General	... 273
866. Act done before the Constitution are covered	... 273
867. Laws in force	... 273

REASONABLE RESTRICTION AND FREEDOM OF ASSOCIATION

(See Chapter XII on Freedom of Association)

818. General	... 258
--------------	---------

REASONABLE RESTRICTION AND FREEDOM OF MOVEMENT

(See Chapter XI on Freedom of Movement)

819. General	... 259
820. Interest of the general public	... 259
821. Public Health	... 259
822. Public Security	... 259
823. Public Safety	... 259
824. Public order	... 260
825. Public morals	... 260
826. Protection of the interests of the Scheduled Tribes	... 260
827. Externment	... 260
828. Duration of Externment	... 261
829. Removal from India	... 261
830. Grounds, if to be communicated	... 261

REASONABLE RESTRICTION AND FREEDOM OF RESIDENCE

(See Chapter XIII on Freedom of Residence)

831. Re entry from foreign countries	... 261
--------------------------------------	---------

REASONABLE RESTRICTION AND RIGHT OF PROPERTY

(See Chapter XIV on Right to Property)

832. General	... 261
833. What is a restriction on the freedom of property	... 262
834. In the interests of	... 262
835. In the interests of Scheduled tribes	... 262
836. Prohibition	... 262
837. Pre-emption	... 262
838. National Economy	... 263
839. Rent control	... 263

PARA	PAGE
895. Right to live	... 282
896. Deprivation of personal liberty	... 283
897. Articles 21 and 22	... 284
898. Procedure established by law	... 284
899. Executive Instructions are not covered by the definition of law	... 286
900. Article 22,—Arrest distinguished from protective custody	... 286
901. Right to be defended by a pleader	... 287
902. Magistrate means magistrate acting as court	... 287
903. Detention by private individual is not covered	... 287
904. Right to appear in examination is not covered	... 287
905. Production within 24 hours is mandatory	... 287
906. Imprisonment or detention under some law is not a restriction under Article 19	... 288
907. Arts 20 to 22 guarantee entire protection of personal liberty, regarding substantive and procedural law	... 289
908. Protection provided by Article 20 to 22 is that life and personal liberty cannot be affected except under valid law	... 289
909. Seven heads of fundamental rights	... 290
910. Articles 20 to 22 put restrictions on State: control in case of deprivation of life and liberty	... 291
911. Articles 20 to 22 contain the entire protection of life and liberty	... 291
912. Reasonableness of law can be determined by Courts under Article 19, but not of law relating to deprivation of life and liberty	... 292
913. Articles relating to right to freedom must be considered together	... 292
914. Article 19, does not protect detention under some law	... 292
915. Article 19, how to be read,—Legislation must be directly in respect <i>requisit of the fundamental rights</i>	... 293
916. Some Instances	... 293

CHAPTER XIX

PREVENTIVE DETENTION

917. Public order and Public safety	... 296
-------------------------------------	---------

AARA	PAGE
868 Offence	273
869 Prosecuted and punished	273
870 Same offence	273
871 More than once	274
872 Ex post facto laws	274
873 Double Jeopardy	274
874 By authority of law	275
875 Fixing Minimum sentence of fine	275
876 Trial failing for want of sanction second trial not barred	276
877 Punishment under Sea Customs Act proceedings under Foreign Exchange Regulation can be taken	276
878 Unauthorised use of Canal is not an offence	276
879 Forfeiture is not a penalty	276
880 Trial under an ex post facto law	276
881 Offence under Prevention of Corruption Act—Property acquired before the Constitution can be taken into consideration	276
882 Punishment by jail authorities does not bar trial under Indian Penal Code	276
883 Distinct offences	277
884 Confiscation of goods effect	277
885 Immunity under clause 3 of article 20 when available	278
886 Protection when available	278
887 Compelling to be a witness	279
888 Accused if can be a witness on his own behalf	279
889 Production of documents	279
890 Corporations if person	279
891 Retracted Confession	279
892 Section 27 Evidence Act if constitutional	280

CHAPTER XVIII

PERSONAL LIBERTY

893 Meaning of personal liberty Article 19	282
894 There is no deprivation of personal liberty if a man is under detention under some law	282

CHAPTER XXI

ACQUISITION ETC.

945. What is property	... 310
946. Acquisition—General	... 311
947. Taxing law	... 312
948. Money cannot be acquired	... 312
949. Change of management is not acquisition	... 312
950. Private action cannot be challenged	... 312
951. Administrative order is of no value	... 312
952. Illegal Seizure	... 313
953. Some Cases	... 313
954. Acts which are valid	... 314
955. Some Invalid Acts	... 315
956. Amendment of Article 31	... 318
957. Power to examine law of acquisition	... 316
958. Article 31 A does not revive void laws	... 316
959. Laws under which estates etc. are acquired, modified etc. are valid	... 316
960. Estates and rights in Estate	... 317
961. Transfer of shamlat land etc. to Panchayat is valid	... 317
962. Taxation laws, Retrospective effect	... 317

CHAPTER XXII

RIGHT TO CONSTITUTIONAL REMEDIES

963. Object and effect of Article 32	... 318
--------------------------------------	---------

CHAPTER XXIII

FUNDAMENTAL RIGHTS AND ARMED FORCES

964. General	... 319
965. Army Act, 1950 does not violate Article 14	... 320
966. Central Government confirming the order passed by Court Martial—Nothing illegal.	... 320
967. Government servant not included	... 321

PARA	PAGE
918. Preventive Detention law in conflict with Article 22 is void	... 297
919. Article 22 lays down safeguards	... 298
920. Reasonable restrictions, Article 19	... 299
921. Section 14 of the Preventive Detention Act, 1950 was <i>ultravires</i>	... 300
922. Preventive Detention defined and distinguished from punitive and arbitrary detention	... 300
923. Communication of grounds	... 301
924. Facts need not be communicated in public interest	... 301
925. One ground vague, effect of	... 301
926. Object of clause 7 of Article 22	... 301
927. Due process of law	... 302
928. Period of Detention not to be communicated by the Board	... 303

CHAPTER XX

RELIGIOUS, CULTURAL & EDUCATIONAL RIGHTS

929. Scope of Article 26	... 304
930. Right of freedom of religion	... 304
931. Religion, meaning of	... 305
932. State regulation	... 305
933. Freedom to manage religious affairs	... 306
934. Religious denomination or section thereof	... 306
935. Matters of religion	... 306
936. Right to administer property in accordance with law	... 307
937. Freedom as to payment of taxes for promotion of any particular religion	... 307
938. Protection of cultural and educational rights of minorities.	... 307
939. Articles 15 and 29	... 307
940. Discrimination as to admission to educational institutions.	... 307
941. Minority Community	... 308
942. Appeal to conserve language is not a corrupt practice	... 308
943. Fixing seats for a community is illegal	... 308
944. Some cases	... 309

PARA	PAGE
990. Article 77 would apply to an order passed under article 359	... 335

STATE EXECUTIVE

991. State Government—Meaning of	... 336
992. State can invoke inherent power under section 561 Cr. P. C.	... 336
993. Delegation of power by State Government should be harmonious to the provision of statute	... 337
994. Rules of Business—Allocation of business can be made in advance	... 337
995. Order of detention should be in writing, question whether order of its record should comply with article 166, left open	... 338
996. Advice given by Council of Minister is a protected as privileged	... 338
997. Executive action under Article 166 to be in the name of the Governor	... 339
998. Order passed under article 166, when can be challenged	... 339
999. No allegation that the order is not made by the Government—Presumption will be that the order is valid	... 340
1000. Order under article 166 should be communicated to the person concerned before it can be called as an order of Government	... 340
1001. Chief Minister can pass an order regarding a matter falling in the portfolio of some other minister	... 341
1002. Rajasthan Rules of Business—Review petition against the order of Governor must be referred to governor in case it is to be rejected	... 341
1003. Rajasthan Rules of Business framed under article 166—Order making compulsory retirement not to be put before Governor or Chief Minister if not by way of penalty	... 341
1004. Order under article 166 defective—Burden of proof that it was properly passed is on Government	... 342
1005. Power to dismiss is outside the scope of Article 154	... 342
1006. State executive, How works	... 343
1007. Difference between a Minister and Secretary of a department	... 343
1008. Minister not part of the department	... 344
1009. Executive decision and its formal expression	... 344
1010. Article 166, is directory	... 344

CHAPTER XXIV

DIRECTIVE PRINCIPLES OF STATE POLICY

968.	Directive principles—Scope of—Validity of law, whether can be determined on their basis.	... 322
969.	Fundamental Rights although in conflict with Directive principles must be enforced.	... 323
970.	Education grant cannot be claimed as of Right—Purpose of Article 30 (1) cannot be defeated.	... 323
971.	Fee concession cannot be claimed as of right—Harijan colony can be built.	... 323
972.	Prohibition Laws can be made.	... 323
973.	Slaughter of milch animals when allowed.	... 323
974.	Distinction cannot be made between private and public undertaking's workers	... 324
975.	Living wage and Directive principles	... 325
976.	Living wage—Meaning of	... 326
977.	Wage structure, three categories	... 326
978.	Validity of laws cannot be tested with respect to Directive principles	... 328
979.	Concept of minimum wage is in harmony with modern trend	... 327
980.	Directive principles not to be enforced at the expense of minorities.	... 327

CHAPTER XXV

UNION AND STATE EXECUTIVE

981.	General	... 329
982.	Executive power, defined	... 329
983.	Executive and other power—Theory of Separation of power does not exist	... 331
984.	Election of President and Vice President can be challenged only in accordance with the statutes	... 331
985.	Word 'Election' used in Article 71 means the whole election	... 331
986.	Executive, Legislative and judicial Function; explained	... 332
987.	President cannot delegate powers which are invested in him as President	... 333
988.	President can delegate only executive Functions under Article 258.	... 333
989.	Validity of orders passed under Article 77, when the validity can be questioned.	... 334

PARA		PAGE
1034.	Article 19 (1) must yield to Article 196	... 357
1035.	Deprivation of personal liberty under Article 195 is unconstitutional	... 358
1036.	Court cannot regulate the procedure of House	... 358
1037.	At any time—Rule 21—Meaning of	... 353
1038.	Effect of expunging the remark	... 359
1039.	Court not to judge whether contempt is committed or not	... 359
1040.	Right to move Court in case of violation of articles 20 and 21 not barred	... 359
1041.	Allegation of malafides in privilege proceedings	... 359
1042.	Power to punish for contempt should be exercised of carefully	... 360
1043.	"Dissolution" and "Prorogation" English practice cannot be availed in India	... 360
1044.	Power to issue general warrant	... 362
1045.	"Prorogation and Dissolution under Indian Constitution does not dissolve upper house	... 362
1046.	Bill pending when lapses on prorogation	... 363
1047.	Scope of Article 196, Clause 5—Bills do not lapse if assent of President or Governor is not given	... 363
1048.	President or Governor not bound to give assent within any specified time	... 364
1049.	Bill sent back with a message by President or Governor can be considered by new house	... 364
1050.	Bill pending in council but not passed by Assembly does not lapse	... 365
1051.	Money bill, Municipal Taxation does not fall within the term	... 365
1052.	Office of profit, How established	... 366
1053.	Irregularity in procedure of legislature, effect	... 368
1054.	Disqualification incurred before election not covered by article 191	... 369
1055.	Scope of power of Election Commission under article 192	... 370
1056.	Who can raise the question of disqualification	... 370
1057.	Modification under Article 370, extent of power of President	... 371
1058.	Filling the seats, meaning of	... 371

CHAPTER XXVII

JURISDICTION OF SUPREME COURT

1059.	General	... 380
-------	---------	---------

PARA	PAGE
1011. Expressed to be made—Meaning of	... 345
1012. Who should communicate the orders	... 345
1013. Power under Article 161 to give pardon and power of Supreme Court under 142 to suspend sentence compared with power of Judicial committee	... 345
1014. Appeal pending in Supreme Court, action cannot be taken under article 161	... 346
1015. Ex. Maharajas have no power to grant pardon after the enforcement of Constitution	... 347

CHAPTER XXV

UNION AND STATE LEGISLATURES

1016. General	... 349
1017. Union Legislature	... 349
1018. State Legislatures	... 349
1019. Scope of Articles 105 and 194	... 350
1020. Article 19 (1)(a) does not govern the freedom of speech of Legislators	... 350
1021. Freedom of speech is absolute and unfettered	... 351
1022. Powers and privileges of Legislatures are the same as these are of House of Commons	... 351
1023. Power and privileges of House of Commons should subsist on 26th January 1950 and should be so recognised by English Courts	... 352
1024. Rules made by Legislature are subject to Part III	... 352
1025. Law prescribing powers and privileges if subject to Article 13	... 352
1026. Power to prohibit publication of inaccurate report	... 353
1027. Parliamentary privilege, Defined	... 354
1028. Freedom of press does not confer on it the right to commit breach of the privileges of the House	... 355
1029. Law made under Article 194(3) is subject to Article 13 (2)	... 355
1030. Legislatures not Court of record	... 356
1031. Judge of High Court entertaining petition challenging an order of Legislature imposing penalty, no contempt of House	... 356
10 2. Contempt of House, penalty to be imposed after hearing the parties	... 356
1033. Right of an advocate to assist the client is uncontrolled by Article 194	... 357

PARA		PAGE
1198.	Duty to act judicially does not clothe the authority with judicial power of State	... 424
1199	Appeals by special leave against the award of tribunal—Scope	. 425
1200.	Argument can be allowed to be raised by respondent in support of judgment on ground decided against him on special leave	... 425

REVOCATION OF LEAVE

1201	Leave can be revoked	... 426
1202.	Leave obtained in violation of mandatory provisions can be revoked	... 426
1203	Leave cannot be revoked if the parties are left remedyless	.. 427

FINDING OF FACT

1204	Interference when to be made under Article 136 when finding of fact is involved	427
1205	Finding of fact if can be challenged	. 427
1206	Exceptional circumstances	. 427
1207	Inadequacy of evidence to reach a finding is not a question of law	. 431
1208	Interference in second appeals when to be made	431
1209	Finding of fact recorded under section 66 of the Income Tax Act	... 431
1210	Finding as to material effect on election cannot be challenged	. 432
1211	Mixed question of law and fact	. 432
1212	All evidence not considered finding of fact may be interfered with	.. 432
1213	Additional evidence cannot be led	.. 433
1214	Evidence is not to be considered under Article 136	... 433
1215	Evidence not to be reviewed except in exceptional circumstances	.. 433
1216.	Question likely to arise in other cases allowed to be raised	... 433
1217	New point if can be disposed on the basis of evidence on record may be raised	, ... 434

INTERLOCUTORY ORDERS

1218.	Interlocutory orders may be challenged	, ... 435
1219	Case not made out in the statement of case	.. 435

PARA		PAGE
1220.	Similar decisions not challenged, becomes final but does not bar the Court to hear other cases	436
1221.	Stale matters	436
1222.	Order passed with in jurisdiction, Court should be slow to interfere	436
1223.	Adjournment not granted, article 136 if apply	436

ELECTION MATTTRES

1224.	Elections matter and article 136	437
1225.	Misdescription in the heading of special leave, is not fatal	437
1226.	Order without jurisdiction cannot be sustained	431
1227.	Leave of High Court should be obtained before asking special leave—Delay to be explained	438
1228.	Certificate may not be obtained if the practice of the High Court so permits	438
1229.	Allegations made by affidavits, Court not to interfere with the findings	438
1230.	Costs	439
1231.	Question of jurisdiction when can be raised	439
1232.	Discretion exercised by Courts below not to be interfered with	439
1233.	Technical defects—Respondent not properly described does not make an appeal incompetent	439
1234.	Order made on a question of law under article 226 not taken to Supreme Court, case tried on merits, award given, matters settled under article 226 become final	440
1235.	Party obtaining decree for divorce from High Court should not remarry till the period for special leave expires	440

ERROR OF LAW

1235A.	What is error of law	441
--------	----------------------	-----

DISCRETION

1236.	Exercise of discretion not to be interfered with	442
1237.	Industrial Award, when to interfere	443
1238.	Circumvention of ordinary procedure when allowed	444
1239.	Exercise of advisory jurisdiction—Court not to travel beyond it	447
1240.	Power under Article 136 can be exercised only when invoked	448

PARA		PAGE
1241.	Decision of appellate tribunal under income tax can be challenged under article 136	... 448

REMAND

1242.	Real controversy not appreciated case remanded	... 448
-------	--	---------

Case not remanded

1243.	Allegation of malafide cannot be made for the first time in special leave application	... 449
1244.	Dealy in making applications for special leave not to be condoned ex parte	... 449
1245.	Hypothetical question not to be decided	. 449

CRIMINAL MATTERS

1246.	Scope of Article 138 in criminal matters	... 450
1247.	Fresh opinion about the guilt if can be formed	... 453
1248.	Evidence not to be scrutinised unless there is failure of justice	.. 454

SENTENCE

1249.	Interference in matters of sentence	.. 454
1250.	Criminal appeals when abate	. 455
1251.	Appeal against jury-verdict, scope of interference narrow	.. 455
1252.	Conviction based on circumstantial evidence, principles governing	.. 455

PROFESSIONAL MISCONDUCT

1253.	Cases of professional mis conduct	... 456
1254.	Cases under Corruption Act	.. 457
1255.	Review	... 458
1256.	Advisory jurisdiction	459
1257.	Rule making power	. 459
1258.	Binding Nature of decision	.. 460

CHAPTER XXVII

WRITS

1259.	Scope of Article 226	.. 465
-------	----------------------	--------

QUESTION OF FACT

1260.	Property whether public or private, question cannot be raised in writ proceedings	... 466
-------	---	---------

PARA		PAGE
1261.	Alternate Remedy if bars a writ	... 466
1262.	Interlocutory orders	... 467
1263.	Interim order should not be passed on a holiday	... 468
1264.	Res judicata in writ proceedings	... 469
1265.	Constructive Res judicata	... 469
1266.	Decision on merits under Article 32 and 226 operate as Res judicata in Suits	... 470
1267.	Scheme settled by Court for the administration of religious property can be challenged in writ proceedings	... 471
1261.	Decision given under Article 226 based on assumption can be set aside	... 471
1269.	Dispossession ordered by executive fiat—Writ will lie	... 471
1270.	Final order to be challenged in writ proceeding, writ cannot be issued to original authorities	... 471
1271.	High Court should not encourage circumvention of ordinary procedure in writs	... 473
1272.	Various assessment orders challenged in one writ—One court fee is enough in appeal to Supreme Court	... 473
1273.	Contempt proceedings in a legislature can be challenged	... 473
1274.	Manifest injustice should be shown	... 473
1275.	Question of Taxability should not be decided under Article 226	... 474

ADMINISTRATIVE AND JUDICIAL ORDERS

1276.	Order confirming sale is a judicial order	... 474
1277.	Sufficiency of evidence cannot be gone into	... 475
1278.	Writ not to be granted if there is breach of only contractual obligation	... 475
1279.	Consequential relief can be given	... 475
1280.	Delay and Limitation—Period prescribed under Limitation Act can be taken as a guide	... 475

WRIT OF CERTIORARI

1281.	Scope of	... 476
1282.	Manifest error apparent on the face of record	... 477
1283.	Executive instructions—Breach of—Writ of certiorari does not lie	... 478

PARA	PAGE
1284. Statutory rules and executive directions, distinction	... 479
1285. Quasi judicial and Administrative bodies	... 479
1286. Authorities can interfere only under express provision of law	... 481
1287. Mere erroneous decision, if enough to issue certiorari	... 481
1288. All reasons not set out, no ground for certiorari	... 482
1289. Existence of Dispute is judicial or quasi judicial	... 482
1290. High Court not to act as court of appeal, while issuing certiorari	... 482
1291. Rules made by governor will apply to quasi judicial acts	... 483
1292. Quasi judicial bodies how to function	... 484
1293. Quasi judicial Act	... 484
1294. Standard of reasons	... 486
1295. Point not raised in petition normally cannot be urged but was allowed to be urged in this case	... 486
1298. Quasi judicial body Should give hearing and Reasons	... 486
1297. Administrative Tribunal and Court	... 487
1298. High Court should not correct the error but should remand the Case	... 487

NECESSARY AND PROPER PARTIES

1299. Party in whose favour order is passed is necessary party	... 487
1300. Parties not added under Article 226 cannot be added in proceedings under article 133	... 487
1301. Territorial jurisdiction	.. 487
1302. Final order decision under article is a final order	... 488
1303. A Person whose Fundamental Rights have not been violated may also file a writ	488
1304. Permit not in existence writ will not lie	.. 489
1305. Disputed title writ cannot be filed	.. 489
1306. Point not in issue should not be decided	490
1307. Alternate relief can be claimed	.. 490
1308. Judge should not be a party to the cause	.. 490
1308A. Bias Point should be taken in petition	491

MALAFIDE

1309. Malafide vitiates every proceedings	... 491
1310. Source of information should be given	.. 492
1311. Allegations of malafide made, affidavit to rebut should be filed	.. 492

PARA		PAGE
1312.	Bias, what it signifies	... 492
1313.	Fair opportunity to be heard	... 492
1314.	Right to cross examine is not part of natural justice	... 493
1315.	Broad Requirements of natural justice	... 493
1316.	Person choosing not to attend the court cannot complain	... 494
1317.	Personal bias violates natural justice	... 494
1318.	Impartial treatment to be given	... 494
1319.	Judicial or quasi-judicial bodies should not violate principles of natural justice	... 494
1320.	Opportunity to show cause	... 495
1321.	Rules of Natural justice vary from case to case	... 495
1322.	Case of the prosecution should be stated, evidence not brought to the notice of other party should not be acted upon	... 495
1323.	Fair opportunity, what is	... 495
1324.	Disciplinary action, natural Justice to be observed	... 496
1325.	Refusal to record evidence does not violate natural justice...	496
1326.	Records should be before the Courts	... 497
1327.	Writ of Prohibition—Scope of	... 497
1328.	Question of jurisdiction not involved writ of Prohibition may not be issued	... 497
1329.	Purpose of	... 497
1330.	Person under detention if not produced in court when so ordered contempt proceeding may be launched	... 498
1331.	Writ will issue if a person is detained without authority of law	... 498
1332.	Detention order is an executive order	... 498
1333.	Writ of quo warranto	... 499
1334.	Writ of mandamus can be issued when there is breach of some statutory duty	... 499
1335.	Liability arising out of breach of Contract	... 499
1336.	Tax illegally recovered, Mandamus can be issued for refund	... 499
1337.	Some Instances	... 500
1338.	Scope of Article 227	... 501
1339.	Discretion under Article 227 not properly exercised Supreme Court may interfere	... 501
1340.	Unlawful Dispossession, High Court can interfere under Article 227	... 501
1341.	Tribunal Meaning of	... 501
1342.	Tribunal cannot ignore the judgment of High Court	... 502
1343.	Article 227 does not confer appellate jurisdiction	... 502
1344.	Scope of article 32	... 502

PARA	PAGE
1345. Relief granted under article 32 when there was dispute regarding the validity of a regulations	502
1346. Article—32 "Any Court"—Meaning of	502
1347. Articles 22b and 32, Compared	503
1348. Order passed by High Court cannot be challenged	503
1349. Procedure <i>ultravires</i> , Article 32 may be invoked	503
1350. Infringement by private parties	503
1351. Contractual rights not covered	503
1352. Declaratory order can be made under Article 32	504
1353. Adequate remedy under article 32	505
1354. Article 32 does not take away the Right of ordinary court to adjudicate	506
1355. Breach of law is not a ground for invoking Article 32	506
1356. Threat of recovery of tax, Article 32 is applicable	506
1357. Writ petition dismissed in High Court, Supreme Court may not interfere under article 32 if fundamental right involved...	507
1358. Article 136 cannot be circumvented by restoring to Article 32	507
1359. Intervener has no right to reply	507
1360. Petitioner to be kept strictly with in pleading	507
1361. Misconstruction of a statute cannot be challenged under article 32	508
1362. Writ can be filed when the fundamental right is violated or when there is a threat of violation	508
1363. Writ lies only if there is infringement of Article 32	509
1364. Act of legislature nullifying the decision under Article 32 is legal	509
1365. Appropriate proceeding, meaning of	512
1366. Executive order passed on subjective satisfaction not liable to be quashed in writs	510
1367. Question of fact and Article 32	511
1368. Taxing authority entitled to act judicially no violation of fundamental rights	512
1369. Taxing law when can be challenged under article 32	512

CHAPTER XXIX

SERVICES

1370. General	515
1371. Discharge—When Penal	516

PARA	PAGE
1372. Suspension	... 516
1373. Suspension with retrospective effect	... 516
1374. Suspension during leave	... 516
1375. Stigma	... 517
1376. Dismissal and removal—Difference	... 517
1377. Preliminary enquiry	... 517
1378. Difference in temporary and permanent posts	... 518
1379. Nature of protection given by Article 311	... 518
1380. Reduction in rank—Losing places in the same cadre. No reduction in rank	... 518
1381. Penal action—What is	... 519
1382. Show cause—What is	... 519
1383. Departmental proceedings are quasi judicial	... 519
1384. Dismissal—Meaning of	... 519
1385. Reasonable opportunity—Explained	... 519
1386. Probationers—Holding of a formal enquiry is not punishment	... 520
1387. Statement made in previous enquiry—cannot be made the basis for punishment—Fresh enquiry must be held	... 520
1388. Chief Justice can delegate the power to hold enquiry to any other judge	... 521
1389. Termination in accordance with service rules does not attract Article 311	... 521
1390. Power of appointment includes power to dismiss or suspend	... 521
1391. Ex-cadre appointee has no right over the cadre appointee	... 521
1392. Person entitled to no pay if he does not join	... 522
1393. Merger—Effect on servants	... 522
1394. Pleasure of President—Meaning of	... 522
1395. Rules should not violate fundamental rights	... 522
1396. Minimum age of retirement should be fixed by rules	... 522
1397. Resignation—Article 311 does not apply	... 523
1398. Protection of Article 311 when available	... 523
1399. Reversion from temporary post not per se reduction in rank	... 523
1400. Rule of pleasure of crown not adopted in India	... 523
1401. High Court can suspend a judicial officer pending final order by Government	... 523
1402. Rules framed in 1955 under an act in 1951 when there was no Council of States—are not repugnant of Article 312	... 524

PARA	PAGE
1403 Members of Secretary of State Services—Enquiry under rules 53 of the (Classification Control and appeal) Rules not essential	524
1404 Pension Reduction in pension is not reduction in rank—Article 311 is not attracted	524
1405 Probationer—Casting aspersion—No opportunity given to rebut the aspersions—Discharge is hit by Article 311	525
1406 Demonstration cannot be banned	525
1407 Government servants enjoy all fundamental rights	525
1408 Suspension in second inquiry—can be imposed	526
1409 Civil Procedure Code—Order 2 Rule 2—The bar of order 2 is not applicable to Article 226	526
1410 Probationer and temporary servants entitled to the protection of Article 311 if the order is penal	526
1411 Malafide—Probationer reverted—Order quashed	526
1412 Non payment of subsistence allowance is not punishment	526
1413 Reversion—persons holding officiating post Reversion to original post does not violate Article 311	527
1414 Probationers—Not entitled to the protection of Article 311 if the order is not penal	527
1415 Article 311 is prov so to Article 310	527
1416 Dismissed removed and reduction in rank—Meaning of	527
1417 Effect of Independence on Indian Civil Service	528
1418 Leave can be revoked	528
1419 Government can differ from the finding of facts recorded by enquiry officer	528
1420 Rules cannot violate 311	528
1421 Changed circumstance—Meaning of	529
1422 Disciplinary matter—Meaning of	
1423 Privilege—Constitution of India Article 163 (3) Advice given by the Council of Minister—Is a privileged document	529
1424 Article 27—President is competent to determine the age of judges of High Court	529
1425 Standard of proof—Proof as required in criminal cases need not be present in departmental enquiries	529
1426 Criminal trial Judgment given—Not binding on enquiry officer in departmental proceedings	529
1427 Charge sheet of facts form single document	530
1428 Temporary servant—holding an enquiry—Stigma—	530
1429 Consorship is illegal	530

PARA		PAGE
1430.	Breach of statutory Rules—Relief can be sought	... 530
1431.	Services of the State include High Court Staff.	... 530

PUBLIC SERVICE COMMISSION

1432.	Judicial Services.	... 530
1433.	Stage at which the Public Service Commission is to be consulted	... 530
1434.	Memorials or petition	... 531
1435.	Provisions of article 320 (3) are not mandatory	.. 531
1436.	Regulations made under proviso to Article 320—Position of	.. 531
1437.	Article 320 does not control Article 311	... 531

CHAPTER XXX

LEGISLATIVE COMPETENCY

1438.	Power of Parliament to legislate with respect to Union List and Concurrent List.	... 532
1439.	Repugnancy—Meaning of.	... 533
1440.	Union and State in some Instances	... 533
1441.	Failure to comply Article 255 defect cannot be removed by legislature	... 533
1442.	Failure to comply Article 255, effect	.. 533
1443.	Power to validate unconstitutional subordinate legislation.	
1444.	Temporary Statute, effect of, expiry of	.. 534
1445.	Repealing Statute.	... 534

DELEGATED LEGISLATION

1446.	General	... 534
1447.	Subordinate Legislation	.. 534
1448.	Conditional Legislation	.. 534
1449.	Delegated Legislation	... 534
1450.	Territorial Competency	... 535
1451.	Maximum limit given, law invalid	... 535
1452.	Tax may be imposed retrospectively and prospectively	... 535
1453.	Expressed intention to	...

PARA

CHAPTER XXXI

PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS

1454	Letters of guarantee etc given to the rulers, no bar to abolish the Jagir	537
1455	Liabilities etc after the formation of the Dominion of Pakistan, Indian Independence (Rights, Properties and Liabilities) order of 1947	537
1456	State is liable for the tortious acts of its servant	539
1457	Contracts by the Government	539
1458	Property going to State by escheat	540
1459	Trading and commerce etc within Indian territory	541

CHAPTER XXXII

EMERGENCY PROVISIONS

1460	Interpretation—Article 359 Only one interpretation possible	
1461	Articles 358 and 359—Distinction	542
1462	Order under Article 359 lasts for a specified period whereas order under 358 last during emergency	542
1463	Presidential order during emergency does not enhance the power of President to legislate	543
1464	Article 359—'Any Court'—Covers all courts in India	543
1465	Article 359—Scope—Applies to proceedings even under section 491 of the Code of Criminal Procedure	543
1466	Substance and not the form of proceeding is the decisive factor	544
1467	Law challenged on the ground of violation of fundamental rights Bar of Article 359 is applicable	544
1468	Order under Article 359 need not be universal	545
1469	Detention in violation of the Act bad—Can be challenged—Article 359—No bar	545
1470	Malafide—Court can be moved inspite of Article 359	545
1471	Delegation excessive—Plea of—Article 359—No Bar	546
1472	Publishing a book of purely scientific nature cannot be banned	546

CHAPTER XXXIII

ELECTIONS

1473	Election petition only remedy to challenge elections	547
1474	Election, meaning of	548

CHAPTER XXXIV

AMENDMENT

1475.	Shankri Prksad's case and Sajan Singh case, a review	...	550
1476.	Fundamental rights enjoy transcendal position and are beyond the reach of Parliament	...	552
1477.	Paramoutancy of Fundamental Rights	...	553
1478.	Amendment is a law made by Parliament subject to article 13.	...	553
1479.	Amending process involves no political question	...	554
1480.	Constituent Assembly can be called to amend Constitution.	...	554
1481.	Amendments how made—Four methods	...	555
1482.	Golak Nath's case, a review	...	555
1483.	Propective over-ruling	...	555
	Constitution of India (Bare Text)	...	561
	Table of Cases and Index	...	709

SUPREME COURT ON CONSTITUTION OF INDIA

• CHAPTER 1

INTERPRETATION

SYNOPSIS

GENERAL PRINCIPLES

1. Introductory
2. All words to be given meaning
3. Spirit of Constitution is irrelevant
4. Intention of Legislature
5. Hardship cannot alter the meaning
6. Legislature not amending the interpretation given by courts—Legitimate inference is that the interpretation is in accordance with the intention of the Legislature
7. Notification to have force of law
8. Court is not to lay down standard for Legislature
9. Defect in phraseology, courts cannot remedy the defect
10. Reference to existing law
11. Legislative intent how determined
12. Grammatical and ordinary sense can be modified
13. Constitution to be liberally interpreted but not at the risk of language used
14. Duty of the court
15. Same meaning to be given to the same word
16. Constitution not to be construed in narrow and pedantic sense
17. Statute once declared void has not again to be shown void in every case
18. Four principles to be considered
19. Ambiguity cannot be created artificially
20. Later Act when to be used to interpret an earlier
21. Construction leading to absurdity and hardship to be avoided
22. Statute creating offence—*Mens rea* is essential ingredient
23. Interpretation defeating the object

- 24 Preamble not to used be when words clear
- 25 Court cannot usurp the function of legislature
- 26 Same expression used in different sections may be interpreted differently
- 27 Words to be given sensible meaning
- 28 Redundancy to be avoided
- 29 Precise words to be given their natural meaning
- 30 Words cannot be added
- 31 Language to be given full effect
- 32 Principles of harmonious construction
- 33 Intention how to be determined
- 34 Gaps cannot be filled
- 35 Grammatical construction
- 36 Express words to be construed strictly
- 37 Background of a statute
- 38 Harmonious construction
- 39 Interpretation defeating the object to be avoided

LEGISLATIVE PROCEEDINGS

- 40 Reports of drafting committee may be referred
- 41 Speech made in the course of debate not helpful
- 42 Statements and objects in a bill may be looked at to see the circumstances under which an act was passed
- 43 Preamble
- 44 Speeches not extrinsic aids
- 45 Statement of objects and reasons
- 46 Acceptance or rejection of amendments to a bill in the course of parliamentary proceedings does not form part of the pre-enactment history
- 47 Prior history may be looked at
- 48 Report of select committee
- 49 Motive of Parliament
- 50 Statement of minister in Parliament
- 51 Wisdom of legislature
- 52 Reference to legislative proceedings if valid

MARGINAL NOTES, TITLE AND PREAMBLE

53. *Marginal notes and heading of chapters*
- 54 Title of statute
- 55 Long title if helpful
- 56 Headings of sections
- 57 Preamble

- 58. Preamble not to be used when words clear
- 59. Preamble or title cannot make words redundant

DECISIONS OF OTHER COUNTRIES

- 60. Analogous provision in Constitution of another country not useful if the language is different
- 61. American Constitutional terms not to be imported unnecessarily
- 62. English decision where statute is based on English law
- 63. English decisions
- 64. Aid of American concepts, laws and precedents

DUTY OF COURT

- 65. Purpose of the Act to be carried out
- 66. Court is not to lay down standard for legislature
- 67. Court should keep the scope of enquiry narrow
- 68. Court cannot re-cast provision
- 69. Interpretation should not be done in vacuo

MANDATORY AND DIRECTORY PROVISIONS

- 70. *Mandatory and directory provisions-General*
- 71. Court should determine the nature
- 72. "Shall" when mandatory
- 73. Use of word "may" effect of
- 74. "May" may mean shall
- 75. Absence of word shall not to be conclusive in deciding the question

TAXING OR FISCAL STATUTES

- 76. Taxing statutes
- 77. Fiscal statutes should be express and clear
- 78. Taxing statutes should be liberally construed
- 79. Construction leading to evasion of tax to be avoided
- 80. Conduct of tax payer how far relevant in the matter of interpretation
- 81. No equity in favour of taxing statute
- 82. Interpretation to be in favour of citizens

PENAL STATUTES

- 83. *Penal statutes to be interpreted liberally*
- 84. Penal statutes—Actual meaning to be given effect to
- 85. Penal statutes in general

GENERAL AND SPECIAL PROVISIONS

- 86. General and special provisions
- 87. *Ejusdem generis*
- 88. Special provision to prevail over general provision

24. Preamble not to used be when words clear
25. Court cannot usurp the function of legislature
26. Same expression used in different sections may be interpreted differently
27. Words to be given sensible meaning
28. Redundancy to be avoided
29. Precise words to be given their natural meaning
30. Words cannot be added
31. Language to be given full effect
32. Principles of harmonious construction
33. Intention how to be determined
34. Gaps cannot be filled
35. Grammatical construction
36. Express words to be construed strictly
37. Background of a statute
38. Harmonious construction
39. Interpretation defeating the object to be avoided

LEGISLATIVE PROCEEDINGS

40. Reports of drafting committee may be referred
41. Speech made in the course of debate not helpful
42. Statements and objects in a bill may be looked at to see the circumstances under which an act was passed
43. Preamble
44. Speeches not extrinsic aids
45. Statement of objects and reasons
46. Acceptance or rejection of amendments to a bill in the course of parliamentary proceedings does not form part of the pre-enactment history
47. Prior history may be looked at
48. Report of select committee
49. Motive of Parliament
50. Statement of minister in Parliament
51. Wisdom of legislature
52. Reference to legislative proceedings if valid

MARGINAL NOTES, TITLE AND PREAMBLE

53. Marginal notes and heading of chapters
54. Title of statute
55. Long title if helpful
56. Headings of sections
57. Preamble

- 58. Preamble not to be used when words clear
- 59. Preamble or title cannot make words redundant

DECISIONS OF OTHER COUNTRIES

- 60. Analogous provision in *Constitution of another country not useful* if the language is different
- 61. American Constitutional terms not to be imported unnecessarily
- 62. English decision where statute is based on English law
- 63. English decisions
- 64. Aid of American concepts, laws and precedents

DUTY OF COURT

- 65. Purpose of the Act to be carried out
- 66. Court is not to lay down standard for legislature
- 67. Court should keep the scope of enquiry narrow
- 68. Court cannot re-cast provision
- 69. Interpretation should not be done in vacuo

MANDATORY AND DIRECTORY PROVISIONS

- 70. Mandatory and directory provisions-General
- 71. Court should determine the nature
- 72. "Shall" when mandatory
- 73. Use of word "may" effect of
- 74. "May" may mean shall
- 75. Absence of word shall not to be conclusive in deciding the question

TAXING OR FISCAL STATUTES

- 76. Taxing statutes
- 77. Fiscal statutes should be express and clear
- 78. Taxing statutes should be liberally construed
- 79. Construction leading to evasion of tax to be avoided
- 80. Conduct of tax payer how far relevant in the matter of interpretation
- 81. No equity in favour of taxing statute
- 82. Interpretation to be in favour of citizens

PENAL STATUTES

- 83. Penal statutes to be interpreted liberally
- 84. Penal statutes—Actual meaning to be given effect to
- 85. Penal statutes in general

GENERAL AND SPECIAL PROVISIONS

- 86. General and special provisions
- 87. Eiusdem generis
- 88. Special provision to prevail over general provision

SUPREME COURT ON CONSTITUTION OF INDIA

- 24 Preamble not to used be when words clear
- 25) Court cannot usurp the function of legislature
- Same expression used in different sections may be interpreted differently
- 27 Words to be given sensible meaning
- 28 Redundancy to be avoided
- 29 Precise words to be given their natural meaning
- 30 Words cannot be added
- 31 Language to be given full effect
- 32 Principles of harmonious construction
- 33 Intention how to be determined
- 34 Gaps cannot be filled
- 35 Grammatical construction
- 36 Express words to be construed strictly
- 37 Background of a statute
- 38 Harmonious construction
- 39 Interpretation defeating the object to be avoided

LEGISLATIVE PROCEEDINGS

- 40 Reports of drafting committee may be referred
- 41 Speech made in the course of debate not helpful
- 42 Statements and objects in a bill may be looked at to see the circumstances under which an act was passed
- 43 Preamble
- 44 Speeches not extrinsic aids
- 45 Statement of objects and reasons
- 46 Acceptance or rejection of amendments to a bill in the course of parliamentary proceedings does not form part of the pre-enactment history
- 47 Prior history may be looked at
- 48 Report of select committee
- 49 Motive of Parliament
- 50 Statement of minister in Parliament
- 51 Wisdom of legislature
- 52 Reference to legislative proceedings if valid

MARGINAL NOTES TITLE AND PREAMBLE

- 53 Marginal notes and heading of chapters
- 54 Title of statute
- 55 Long title if helpful
- 56 Headings of sections
- 57 Preamble

- 58 Preamble not to be used when words clear
- 59 Preamble or title cannot make words redundant

DECISIONS OF OTHER COUNTRIES

- 60 Analogous provision in Constitution of another country not useful if the language is different
- 61 American Constitutional terms not to be imported unnecessarily
- 62 English decision where statute is based on English law
- 63 English decisions
- 64 Aid of American concepts, laws and precedents

DUTY OF COURT

- 65 Purpose of the Act to be carried out
- 66. Court is not to lay down standard for legislature
- 67 Court should keep the scope of enquiry narrow
- 68 Court cannot re cast provision
- 69 Interpretation should not be done in vacuo

MANDATORY AND DIRECTORY PROVISIONS

- 70 Mandatory and directory provisions General
- 71 Court should determine the nature
- 72 Shall ' when mandatory
- 73 Use of word may effect of
- 74 May may mean shall
- 75 Absence of word shall not to be conclusive in deciding the question

TAXING OR FISCAL STATUTES

- 76 Taxing statutes
- 77 Fiscal statutes should be express and clear
- 78 Taxing statutes should be liberally construed
- 79 Construction leading to evasion of tax to be avoided
- 80 Conduct of tax payer how far relevant in the matter of interpretation
- 81 No equity in favour of taxing statute
- 82 Interpretation to be in favour of citizens

PENAL STATUTES

- 83 Penal statutes to be interpreted liberally
- 84 Penal statutes—Actual meaning to be given effect to
- 85 Penal statutes in general

GENERAL AND SPECIAL PROVISIONS

- 86 General and special provisions
- 87 Ejusdem generis
- 88 Special provision to prevail over general provision

SUPREME COURT OF CONSTITUTION OF INDIA

COLOURABLE LEGISLATION

- 89 Colourable legislation
- 90 Doctrine of fraud on power

WARTIME LEGISLATION

- 91 War time legislation to be construed in favour of the State

PROVISO EXEMPTIONS AND EXPLANATIONS

- 92 Exemptions to be strictly construed
- 93 Explanations Value of
- 94 Proviso is sub servient to main provision
- 95 Proviso may be substantive
- 96 Proviso may be an addendum
- 97 Proviso may be looked at when the main provision is ambiguous

PUNCTUATION

- 98 Punctuations Value of

RETROSPECTIVE

- 99 Amending Act when retrospective
- 100 Retrospective effect
- 101 Vested rights can be affected retrospectively expressly

PARI MATERIA

- 102 Provisions not in pari materia

PRESUMPTION

- 103 Repugnancy or conflict between two parts-Presumption is that no repugnancy was intended
- 104 Presumption is in favour of validity
- 105 Interpretation should be in favour of Constitution
- 106 Deeming provision
- 107 Legal fiction

LEGISLATIVE ENTRIES

- 108 Interpretation of entries
- 109 Entries to be liberally construed

MISCELLANEOUS

- 110 Doctrine of liberal construction and social legislation
- 111 Rule of Mechanical construction
- 112 Pith and substance
- 113 Procedural law Technical construction to be avoided
- 114. Procedural law are retrospective

AMENDMENT OR REPEAL

- 115 Amendment applies to pending proceeding

- 116 Repealing Act repealed by another Act Effect
- 117 Illustration
- 118 Repugnancy
- 119 State how far bound
- 120 Severability
- 121 Rule of beneficial construction
- 122 Section may be prospective
- 123 Limitation
- 124 Sub-sections

INTERPRETATION OF RULES

- 125 General
- 126 Rule made under a statute need not be in conformity with the General law
- 127 Rules cannot save the Act

WORDS AND PHRASES

- 128 Abandoned
- 129 Accusation
- 130 Accrue and arise
- 131 Acquire
- 132 Acquittal
- 133 Affairs of State
- 134 Agricultural operation
- 135 Agricultural process
- 136 Aid
- 137 Allotment
- 138 Amend
- 139 Any
- 140 Any one of the director
- 141 Any other mode of transfer
- 142 Appointed
- 143 Area
- 144 As it may judge
- 145 Assignment
- 146 Associated
- 147 As soon as may be
- 148 At any time
- 149 Avocation
- 150 Belonging to
- 151 Business
- 152 By or under this Act or a may be presented

SUPREME COURT ON CONSTITUTION OF INDIA

153	Cargo
154	Carries on business
155	Carrying on business
156	Certify
157	Charge
158	Charity
159	Circumstances and property
160	Collusion
161	Concerned and deal
162	Conclusive evidence
163	Conditions
164	Copy
165	Constituted
166	Consumption
167	Contract of service
168	Continuous
169	Could
170	Court
171	Court immediately below
172	Court or tribunal
173	Cultivable Land
174	Deemed
175	Definite information
176	Demand
177	Demonstration
178	Detains
179	Direction
180	Discharge
181	Dismiss and removal
182	Disso tion and prorogation
183	Distinct matter
184	Election
185	Employed in any industry
186	Employment
187	Escaped assessment
111	Especially
112	Ex-om
113	Proce- here Government otherwise directs
114	Procedu

194. Export
195. Final
196. Final order
197. Finding
198. For the year in question
199. Forthwith
200. Full time
201. Goodwill
202. Goods and manufactures
203. In any case
204. In any reference
205. Import
206. Import in and export out
207. Impose
208. Incidental dispute
209. Industrial dispute
210. Industrial matter
211. Industry
212. In lieu of payment
213. In matters of religion
214. In other cases before the judgment is pronounced
215. In respect of
216. In the course of export
217. In the interest of public
218. In the way of his business as agent
219. Judgment
220. Judicial proceedings
221. Just and equitable
222. Jurisdiction
223. Lands
224. Law
225. Lawfully
226. Law of a State
227. Lease and lend
228. Letter of cover
229. Legislature
230. Lend and loan
231. Material witness
232. Matter
233. Matters

- 234. Memorial and petitions
- 235. Migrate
- 236. Modification
- 237. Modify
- 238. Movables
- 239. Nationality and citizenship
- 240. Not in accordance with
- 241. Not later than fourteen days
- 242. No appeal shall lie
- 243. Normal labour
- 244. Obtains
- 245. Occupant
- 246. Occupier
- 247. Office of profit
- 248. Office under the State
- 249. On whose behalf
- 250. Or
- 251. Order
- 252. Ordinarily
- 253. Or otherwise
- 254. Other similar allowances
- 255. Our Government
- 256. Paid
- 257. Panth
- 258. Parliament may by law provide
- 259. Part
- 260. Pending
- 261. Person
- 262. Personally
- 263. Person practising before the court
- 264. Permission
- 265. Picketing
- 266. Possessed
- 267. Practice
- 268. Practice and procedure
- 269. Police officer
- 270. Previous operation
- 271. Previous years
- 272. Producer and consumer
- 273. Property

- 274. *Profess*
- 275. *Public purpose*
- 276. *Punishment*
- 277. *Purchases, advance and deposit*
- 278. *Purport*
- 279. *Reduction*
- 280. *Rebgrion*
- 281. *Removal*
- 282. *Remove*
- 283. *Rendered illegal*
- 284. *Remuneration*
- 285. *Resides*
- 286. *Retrenchment*
- 287. *Right to practice*
- 288. *Sale of goods*
- 289. *Salary*
- 290. *Satisfied on evidence*
- 291. *Seduction*
- 292. *Secrets*
- 293. *Seized*
- 294. *Service of notice*
- 295. *Shall presume*
- 296. *Shop*
- 297. *Statement*
- 298. *Strike*
- 299. *Subordinate*
- 300. *Substance*
- 301. *Subject to*
- 302. *Substantial question*
- 303. *Substantial and compelling reasons*
- 304. *Taking and retaining possession*
- 305. *Temple*
- 306. *Terminal*
- 307. *Trade business or commerce*
- 308. *Tribunal*
- 309. *Tribute*
- 310. *Trial*
- 311. *Tried*
- 312. *Upto not more than one*
- 313. *Vest*

- 314 While purporting to act as public servant
 315 Wilfully

MAXIMS

- 316 Actio personalis moritur cum persona
 317 Falsus in uno falsus in omnibus
 318 Nemo debet esse iudex causa propria sua
 319 Commodum ex injuria sua magno habere debet
 320 Contemporanea expositio est optima et fortissima in lege
 321 In pari delicto
 322 Ubi remedium ibi jus
 323 Generalia specialibus non derogant
 324 Ut res magis valeat quam pereat
 325 Actus curare meminem gravabit
 326 Silius populi est supreme les

1 Introductory

Interpretation and construction : the process by which the courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed. The terms interpretation and construction have often been used as identical but the two differ from each other in the sense that interpretation is the art of finding out the true sense of the words used by the author whereas construction is drawing conclusions from words which are not clear. See *Cooley Constitutional Limitations*, 197. The fundamental rule of constructions is to find out the intention expressed in the rule and to give natural meaning to the words used. *Jugal v Raw Cotton Co* A I R 1955 SC 376. The words of a statute are to be construed so as to ascertain the mind of the legislature from the natural and grammatical meaning of the words which it had used. But court cannot fill the gaps or supply omissions. The courts are not competent to proceed on the footing that the legislature has committed mistakes. A statute must be read as a whole and effect must be given to every word, clause and even to proviso, exceptions and explanations. Some of the principles laid down by the Supreme Court are given in the following paras

2 All words to be given meaning

While interpreting a statute particularly the Constitution, every word of the statute must be given its true and legitimate meaning. It is improper to omit any word which has a reasonable and proper place in a constitutional statute or to refrain from giving effect to its meaning. *Gopalan v State of Madras* A I R 1950 SC 27 1950 SCR 88 1950 SCJ 174. The language used must be given full effect. *Chunilal Bhai v Narayan Rao* A I R 1965 S C 1457. Context in which the words occur and the object of the statute are also relevant factors in the interpretation of statutes, *Sheikh Gulshan v Sant Kumar*, A I R. 1965 S C 1832.

If the language of the enactment is clear and unambiguous it would not be legitimate for the courts to add any words thereto and evolve therefrom a sense which may be said to carry out the supposed intentions of the legislature. The intention is to be gathered only from the words used by it and no such liberties can be taken by the court, for effectuating a supposed in

tention of the legislature. Words cannot be added to fill the gaps. *Sri Ram Ram Narain v. State of Bengal*, 1959 (Supp) I. S. C. R. 482; A.I.R. 1959 SC. 459.

3. Spirit of the Constitution is irrelevant.

A broad and liberal spirit should inspire those whose duty it is to interpret the Constitution. But this does not mean that they are at liberty to declare an act void because in their opinion it is opposed to the spirit of the Constitution or to stretch the language of the enactment in the furtherance of any legal or constitutional theory or even for the purposes of supplying omissions or even correcting supposed errors. The courts are not at liberty to declare a statute void because in their opinion it is opposed to the spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not been limited, either in terms or by necessary implication, the courts cannot impose a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. The omnipotence of the sovereign legislative power cannot be curtailed by judicial interpretation except so far as the express words of a written Constitution give that authority. Where words are positive and without ambiguity, there is no authority for a court to vacate or repeal a statute on that ground alone. It is only in express constitutional provisions limiting legislative power and controlling the temporary will of majority by a permanent and paramount law settled by the deliberate wisdom of the nation that the courts can find safe and solid ground for declaring void any legislative enactment. Any assumption of authority beyond this would amount to usurping power too great and too indefinite which would be insecure for the protection of private rights or even for the courts themselves. The judicial interpretation cannot limit the sovereign judicial power of legislature. *Gopalan v. State of Bombay*, A.I.R. 1950 S.C. 27, 1950 S.C.R. 80; 1950 SCJ. 174. The argument founded on what is claimed to be spirit of Constitution is always attractive for it has a powerful effect on sentiment and emotion but the courts of law have to gather the spirit from the language used: *Keshrao v. State of Bombay*, A. I. R. 1951 S. C. 129, 1951 SCJ. 182.

The spirit of the law may well be an evasive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. As election law construed according to the grammatical and natural meaning of the language works injustice by placing poorer candidates at a disadvantage, the proper forum for removing the injustice is the legislature and not the judiciary: *Ramanjaya Singh v. Baij Nath Singh*, 1954 S.C. 749.

4. Intention of Legislature.

The primary duty of the courts is to give effect to the intention of the legislature as expressed in the words used by it and no outside consideration can be called in aid to find that intention: *Priyam Singh v State*, A.I.R. 1950 SC 165; 1950 SCR 553, 1950 SCJ 437.

The presumption is that no repugnancy was intended and the Constitution has to be interpreted in a broad and liberal manner giving effect to all its parts and the presumption should be that no conflict or repugnancy was intended by the framers of the Constitution. The ultimate result must be determined upon the actual words used not in *vacuo* but as occurring in a single complex instrument in which one part may throw light upon the other. The Constitution is a federal compact, and the consi-

truction must hold a balance between all its parts *Gopalan v. State of Madras*, AIR 1950 SC 27 1950 SCR 88, 1950 SCJ. 174.

It is no doubt true that if on its true construction a statute leads to anomalous results, the courts have no option but to give effect to it and leave it to the legislature to amend the law. But when on a construction of a statute, two views are possible, one which results in anomaly and the other not, it is the duty of the courts to adopt the one which does not lead to anomaly and seek consolation in the thought that the law bristles with anomalies *Veluswami v. Raja Narain* (1959) Supp (1) SCR. 523, 17 E.L.R. 181.

5 Hardship cannot alter the meaning.

If certain meaning is clear on the face of a particular provision, the question of hardship or inconvenience is irrelevant and these factors cannot be used to give different meaning to the plain language. *Commissioner of Agricultural Income Tax v. Keshab Chandra*, A.I.R. 1950 SC 265, 1950 S.C.R. 435, 1950 SCJ. 364. The argument about the inconvenience and hardship is dangerous one and is only admissible in construction where the meaning of the statute is obscure and the consequences of the provision may cause good deal of hardship to many persons. But this is not a proper matter to influence the court unless in a doubtful case affording foothold or balanced speculation as to the probable intention of the legislature. The proper form for getting the hardship removed is the legislature and not the courts *Morri Bank v. Union* A I R. 1965 SC 1954.*

6 Legislature not amending the interpretation given by courts.

Legitimate inference is that the interpretation is in accord with the intention of legislature where the language used in a particular statutory provision is obscure and the court places upon that particular provision a construction which is not interfered with or amended by the legislature. When the High Court placed an interpretation on a statutory provision within a year of its passing and which was not interfered with by the legislature the Supreme Court held that the silence on the part of legislature amounted to acquiescence on its part and the meaning was in accord with its intention *Ram Nandan Prasad Naryau Singh v. Kapuldeo Ranjee*, A.I.R. 1951 S.C. 155, 1951 SCJ. 199.

7 Notification to have force of law.

Where an order is contained in a notification issued in exercise of power given by an Act, it shall have the force of law. This is a well known rule of construction and interpretation *State of Bombay v. F. N. Balsara*, A I R. 1951 SC 318 1951 SCR. 682, 1951 SCJ. 478.

8 Court is not to lay down standard for legislature.

The court is only concerned with the interpretation of a statute and while doing so it should not lay down any standard which the legislature ought to follow. The court is only concerned to interpret the law and if it is valid to apply the law as it finds it and not to enter upon a discussion as to what the law should be *Purshottam v. B. M. Desai*, A.I.R. 1965 S.C. 20; 1965 2 SCR 887.

9 Defect in phraseology, courts cannot remedy the defect.

The courts are not competent to proceed upon the assumption that the legislature has committed mistakes. The court must proceed on the footing

* See the observations made by Lord Birkenhead in *Sidler v Briggs* 1922-1. A.C.1.

that the legislature intended what it has said. Even if there is some defect in the phraseology the court cannot aid the legislature's defective phrasing of an Act or add and amend or by construction make up deficiencies which are left in the Act. Even where there is a *casus omissus* it is for others than the courts to remedy the defect : *Nalinakha v. Sham Sunder*, 1953 S.C.R. 533 ; A.I.R. 1953 SC 148.

10. Reference to existing law.

It is legitimate to take into account existing laws, and the manner in which they were passed, acted upon and enforced. This applies with equal force to Constitution as well because Constitution itself continues in force all laws which were in existence at the date when it came into being except those which are inconsistent with itself : *State of Bombay v United Motors Ltd.*, 1953 SCR 1069; 1953 SC 252.

11. Legislative intent how to be determined.

It is almost settled rule of construction that to ascertain legislative intent all the constituent parts of a statute are to be taken together and each word phrase or sentence is to be considered in the light of general purpose and object of the Act itself. The title and preamble whatever the value might be as aids for the construction of statute; undoubtedly throw light on the intent and design of legislature and indicate the scope and purpose of the legislation itself : *Popat Lal Singh v State of Madras* 1953 SCR 677; A.I.R. 1953 SC 274 ; *Aswini Kumar v Arabinda Bose*, 1953 S.C.R. 1 A.I.R. 1952 SC 369 ; *M. S. M. Sharma v Shri Krishna Sinha* (1959) (Supp) (1) SCR 806, A.I.R. 1959 SC 395.

12. Grammatical and ordinary sense can be modified.

It is the duty of the Courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity while another will give effect to what commonsense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if some words used in the same section, and even in the same sentence, have to be construed differently. Indeed the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided.* *Shamrao v District Magistrate*, 1952 S.C.R. 683, AIR 1952 SC 324.

It is the duty of the court in construing statutes to give effect to the intention of the legislature. If giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the legislature, which is to suppress the mischief the court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief : *Kanwar Singh v. Delhi Administration*, A. I. R. 1965 SC. 87.

13. Constitution to be liberally interpreted but not at the risk of language used.

A Constitution has to be liberally construed so as to advance the content of the right guaranteed by it. But this rule is not to be applied if the language is otherwise clear and unambiguous: *State of West Bengal v. Subodh*

*See the speech of Lord Wensleydale in *Grey v Person* (1857) 6 H.L.C. 31 at P 106 quoted with approval by the Privy Council in *Narayana Swami v Emperor* A.I.R. 1939 P.C. 47. See also *Salmon v Dumcombe* (1883) 11 AC 624 at p. 634.

Gopal A I R 1954 SC 92 The heads of legislation in the lists should not be construed in a narrow and pedantic sense but should be given large and liberal interpretation. *Sri Ram Ram Narain v. State of Bombay, 1959 (Suppl) 1 S C R 489 A I R 1959 SC 459*

14 Duty of the Court

The duty of the Court is to see that the purpose of the Act is carried out and a construction which will defeat the purpose of the Act or which will travel beyond it has to be avoided. *Bishamter Singh v State of Orissa 1955 S C 1939* The Court should try to harmonise the conflicting provisions. *Raj Krushna Bose v Binod Kanungo A I R 1954 S C 202* A construction which is logical should be placed upon a statute. *Kalidas v State of Bombay, 1955 S C R 887 A I R 1955 S C 62.*

15 Same meaning to be given to the same word

The same word appearing in the same section of the same Act or rules must be given the same meaning unless there is anything to indicate to the contrary. *Guruswamy v State of Mysore A I R 1954 S C 592* Intention should be primarily gathered from the Act. Unless there is any ambiguity, surrounding circumstances and constitutional principles and practice are not to be examined. Where meaning of the words is clear it is unnecessary to search for and select a particular meaning out of many given in dictionary. *Mangoo Singh v Election Tribunal 1957 SC 912 1958 S C R 418.*

16 Constitution not to be construed in narrow and pedantic sense

The rules which apply to the interpretation of other statutes apply equally to the interpretation of a constitutional enactment subject to this reservation that their application is of necessity conditioned by the subject matter of the enactment itself. The constitution is not to be interpreted in a narrow pedantic sense. In construing an entry in a list conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words though the cardinal rule of interpretation is that words should be read in their ordinary natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest possible amplitude. **State of Bombay v F N Balsara 1951 (2) S C R. 682 A I R 1951 SC 318 Narichandra v Commissioner of Income Tax Bombay 1955 S C R 829 A I R 1955 SC 58*

17 Statute once declared void has not again to be shown to be void in every case.

Once a statute is declared void under Article 13(1) or 13(2) by Supreme Court that declaration has the force of law and the statute so declared void is no longer law *qaa persons whose fundamental rights are thus infringed.* This is so because of Article 141 of the Constitution which lays down that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. In America there is no similar statutory provision where the declaration by a court of unconstitutionality of a statute which is in conflict with Constitution affects the parties alone and there is no judg

*See Observations made by Gwyer C. J in *Central Provinces and Berar, Sales of Motor Spirits and Lubricants Taxation Act 1938 A I R 1939 F C. 1* at pages 4 and 5 which were approved by the Supreme Court in 1955 S C R 829

ment against the statute, that the opinion or reasons of the court may operate; as a precedent for the determination of other similar cases but it does not strike the statute from the statute book; the parties to that suit are concluded by the judgment but no one else is bound; a new litigant may bring new suit based on that very statute and the former decision cannot be pleaded as estoppel but can be relied upon only as precedent.* In India however once a law has been struck down as unconstitutional, no notice can be taken of that law. The court is not empowered to look at that part of the law which has been declared void and there is no onus resting on the accused person to prove that the law that has been declared void is unconstitutional in that case : *Behram Khurshid v. Bombay State*, 1955 S.C.R. 613, A.I.R. 1955 S.C. 123.

18. Four principles to be considered.

For the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered —

- (i). What was the common law before the making of the Act.
- (ii) What was the mischief and the defect for which the common law did not provide.
- (iii) What remedy the parliament has resolved and appointed to cure the mischief.
- (iv) The true reason of the remedy.

The duty of judges is always to make such construction as shall suffer subtle inventions and evasions for continuance of the mischief and which will help to remove the defect for which the legislation was made. It is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise and to the later Act which provided the remedy. † *Bengal Immunity Co. v State of Bihar*, 1955 (2) S.C.R. 603; A. I. R. 1955 S. C., 661.

19. Ambiguity cannot be created artificially.

If there is ambiguity in the terms of the statute, recourse must naturally be had to the well established principles of construction but it is not permissible first to create an artificial ambiguity and then try to resolve the ambiguity and resort to some general or special principle of construction: *I.T. Commr v. Indian Bank*, A.I.R. 1965 S.C. 1473. The Court cannot add words to a section unless the section as it stands is meaningless or of doubtful meaning; *Indian General Insurance Co. v. Capt. Inder Singh*. A.I.R. 1959 S.C. 1331. Reference should be made to the context and the words should be understood in the sense in which they best harmonise with the subject matter of the statute.

20. Later Act when to be used to interpret an earlier.

Except as a parliamentary exposition, subsequent Acts are not to be relied on as an aid to the construction of prior unambiguous Acts. A later statute may not be referred to, to interpret the clear terms of an earlier Act which the later Act does not amend even though both Acts are to be

*See the Constitution of the United States Vol. I.P. 10 by Willoughby.

†See *Heydons cases* (1584) 3 Co. Rep. 7 a V *Mayfair Property Co.* (1893) 2 Ch. 28 at p. 35. *Eastman Photographic Material Co. v Comptroller General of Patents, Designs and Trade Marks* 1898 A.C. 571 at 576 which were approved by Supreme Court in the case.

construed as one unless the later Act expressly interprets the earlier Act, but if the earlier Act is ambiguous the later Act may throw light on it as where a particular construction of the earlier Act will render the later incorporated Act ineffectual. An act of parliament does not alter the law by merely betraying an erroneous opinion of it. *Nalchand Mody v I T Commissioner Bombay* AIR 1957 SC 193 (1966) 2 SCJ 40f To the same effect are the observations made earlier by the Supreme Court of India in *Shiv Shankar Shukla v A D Dinkar* 1957 SCR 121 at p 140

21 Construction leading to absurdity and hardship to be avoided

If a statute leads to absurdity and hardship or injustice presumably not intended a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. A penal statute should not be so construed so as to punish a person who has neither committed nor abetted any offence. Such a person has done no mischief and should not be visited with any evil consequences. *Ram Prasad v Vijay Kumar*, AIR 1967 SC 276. A construction which is more beneficial to persons in whose interests the Act is passed and furthers the policy of the Act is to be preferred. *Alenbic Chemical Works v Workmen* (1961) 3 SC R 276

22 Statute creating offence Mens rea is essential ingredient

Mens rea is an essential ingredient of a criminal offence. A Statute may exclude the element of mens rea but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excludes mens-rea. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredient of the offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of the mens rea that would be implied in a statute creating an offence would depend on the object of the Act and the provisions thereof. Such a construction would not rope in innocent persons. When the existence of a particular intent or state of mind is a necessary ingredient of the offence and prima facie proof of the existence of the intent or state of mind has been given by prosecution the defendant may excuse himself by disproving the existence in him of any guilty intent or state of mind. *Nathu Mal v State of Madhya Pradesh* AIR 1966 SC 43. The same view has been expressed in *Sanjoo Prasad v State of Uttar Pradesh* (1963) 3 SCR 324 and in *Hari Prasad v. State* 1951 SCR. 322, AIR 1951 SC 204

23 Interpretations defeating the object.

It is trite saying that the object of interpreting a statute is to ascertain the intention of the legislature enacting it. An interpretation which would defeat the object of the legislature is not to be allowed. *Asia Industries v Sarup Singh* AIR 1966 SC 346. Words in a statute which are clear and precise are to be given their natural meaning. *Nagpur Corporation v Its Employees* AIR 1960 SC 675 (1960) 2 SCR 942. Limited interpretation is to be placed in spite of generality of language where

*See the decision of the House of Lords in *Kirkness v John Hodson and Co* 1903 AC 696 and the observation made by Lord Atkinson in *Ormond Investment Co v Betts*, 1928 AC 143 at page 161

liberal interpretation in the general sense would be unreasonable or absurd or would defeat the object of the legislation: *Shahadra S. Light Rly v. V. D. S. Mills*, 1960 2 SCR. 926.

24. Preamble not to be used when words clear.

A preamble is a key to the interpretation of a statute but is not ordinarily an independent enactment conferring rights or taking them away and cannot restrict or widen the enacting part which is clear and unambiguous. The motive for legislation is often reflected in the preamble but the remedy may extend beyond the cure of the evil intended to be removed. No resort to the preamble would be justified in interpreting the provision in the Act, when the words used in it are clear and unambiguous: *R. Venkatswami Naidu v. Narasram Naraindas*, A. I. R. 1966, S. C. 361. But where the enacting part is ambiguous, the preamble can be referred to, to explain and elucidate it: *Burrakur Coal Co. v. Union of India*, A. I. R. 1961, S. C. 954.

25. Court cannot usurp the functions of the legislature.

It is not open to the court to usurp the functions of the legislature. Nor is it open to the courts to place an unnatural interpretation on the language used by the legislature and impute to it an intention which cannot be inferred from the language used by it, by basing itself on ideas derived from other laws: *Manji Lal v. Sugan Chand* A.I.R. 1965 S.C. 101. Intention of the legislature is to be gathered from the language used in the Act: *M. S. M. Sharma v. Sri Krishna Sinha*, A.I.R. 1959 S.C. 375. Where the language used is obscure and the court interprets it in a particular way and the legislature does not take any step to amend the section, then the interpretation given by the court should be deemed to be the intention of the legislature: *Ramnandan v. Kapaldeo*, 1951 S.C.R. 138.

26. Same expression used in different sections may be interpreted differently.

Having regard to the plurality of the meaning, the sense in which the expression is used in different sections and even clauses must be ascertained from the content of the scheme of the act, the language used and the object intended to be served thereby: *Anand Nivas v. Anand*; A.I.R. 1965 S.C. 414.

27. Words to be given sensible meaning.

The words of an act of the Parliament must be construed so as to give sensible meaning to them. The words ought to be construed *ut res magis valeat quam pereat*: *Avtar Singh v. State of Punjab*; A.I.R. 1965 S.C. 666. An interpretation leading to absurd results has to be avoided. Similarly an interpretation which would defeat the object of the legislature cannot be called sensible and must therefore be rejected: *Asia Industries v. Sarup Singh*; 1966 S.C. 346.

28. Redundancy to be avoided.

A construction which will make the provision redundant has to be avoided unless there are compelling reasons to the contrary: *Ghaneshya n Dass v. Regional Assistant Commissioner*; A.I.R. 1964 S.C. 766. Further an interpretation which leads to anomaly has to be avoided. The presumption is that the legislature did not commit a very mistake while passing the law and it cannot be said that the legislature passed something which was useless or redundant: *Vidya Charan v. Khub Chand*, A.I.R. 1964 S.C. 1099.

29. Precise words to be given their natural meaning.

If the words of a statute are in themselves precise and unambiguous, they should be given their natural meaning. In such a situation the best course

is to expound the words in their natural and ordinary sense as the words themselves declare the best intention of the legislature *Shri Ram v State of Maharashtra* AIR 1961 SC 674, (1961) 2 SCR 890

30 Words cannot be added

An interpretation which suggests the addition of words cannot be adopted. For example section 165 of the Indian Penal Code uses the word subordinate to cover the cases which do not fall under section 161, 162 or 163 of the Act. The word subordinate so used is without any limitation and there is no justification to add the words in respect of those very functions in the sections. By the use of the word subordinate without any limitation or qualifying words the legislature shows its legislative intent of making punishable such subordinates also who have no connection with the functions with which the business or transaction is concerned. To limit the meaning of words used in the statute by adding new words would amount to defeating the legislative intent and laying down a policy which was not intended by the legislature. *R G Jacob v Republic of India* AIR 1963 SC 550. Words cannot be added by the courts to fill the gaps under the guise of carrying out the intention of legislature. *Sri Ram Narain v State of Bengal*, AIR 1959 SC 459 1959 (Supp) 1 SCR, 482

31 Language to be given full effect

It is the duty of the court to give full effect to the language used by the legislature. The court has no power either to give to the language a meaning wider or narrower than the literal one unless the provisions of the Act compel it to give such other meaning. No violence is to be done to the language used nor any thing is to be detracted from their meaning by construing them in a way not consistent with the intention of the legislature. *London Rubber Co v Drex Products Inc* AIR 1963 SC 1882. Where the language used is plain and clear full effect must be given to it. Recourse to rules of construction should be made only where the language is capable of two interpretations. *Thakar Amar Singh v State of Rajasthan* 1955 (2) SCR 1369 AIR 1955 SC 504

32 Principle of harmonious construction

The recognised rule of interpretation of statutes is that the expression used should ordinarily be understood in a sense which harmonises with the object of the legislature. If an expression is susceptible of a narrow or technical meaning as well as popular meaning the court would be justified in assuming that the legislature used the expression in the sense which would carry out its object and reject that sense which would render the exercise of its powers invalid. In interpreting a statute a court cannot ignore its aims and objects. *New India Sugar Mills v Commr of Sales Tax* 1963 SC 1207. If there are two conflicting provisions attempt should be made to harmonise the two. *Bengal Ironworks Co v State of Bihar* AIR 1955 SC 661. Same meaning should be given to the same expression in the same section of the same set of rules. *A V Guruswamy v. State of Mysore* AIR 1954 SC 592. However duty to harmonise the provision of an Act does not warrant stretching the words to fill in gaps or omissions in the provisions. *Hira Dey v District Board* AIR 1952 SC 362 1952 SCR, 1122. On the principle of harmonious construction attempt should be made to avoid the conflict rather than to create it. *SC Prashar v Iasantsam* AIR 1963 SC 1356

33. Intention how to be determined.

In construing an enactment and determining its true scope, it is permissible to have regard to all such factors as can legitimately be taken into account to ascertain the intention of the legislature, such as the history of the Act, the reasons which led to its being passed, the mischief which had to be cured as well as the cure as also the other provisions of the statute: *S. C. Prashar v. Vasant Sen*, A. I. R. 1963 S. C., 1356; *Ghamarling Walla, v. Union of India*, 1957 S. C. R. 930, at P. 963. The intention should be primarily gathered from the language used and unless there is ambiguity, surrounding circumstances and constitutional principles and practice are not to be examined: *Commr I. T. v. Sarda Devi*, 1958 S. C. R. 1; A. I. R., 1957 S. C. 832; *M. S. M. Sharma v. Sri Krishna Sinha*, A. I. R. 1959, S. C. 395.

34. Gaps cannot be filled

If the language of the enactment is clear and unambiguous, it would not be legitimate for the courts to add any words thereto and evolve therefrom a sense which may be said to carry out the supposed intentions of the legislature. The intention is to be gathered only from the words used by it and no such liberties can be taken by the courts for effectuating a supposed intention of the legislature. Words cannot be added to fill the gaps: *Sri Ram Ram Narain v. State of Bengal*, 1959 (Supp) 1. S. C. R. 482; A. I. R., 1959 SC. 459.

While interpreting a statute, particularly the Constitution, every word of the statute must be given its true and legitimate meaning. It is improper to omit any word which has a reasonable and proper place in a constitutional statute or to refrain from giving effect to its meaning. *Gopalan v. State of Madras*: A. I. R. 1950 SC 27; 1950 SCR 83; 1950 SCJ. 174. The language used must be given full effect: *Chuni Bhai v. Narayan Rao*, A. I. R. 1963 S. C. 1457. Context in which the words occur and the object of the statute are also relevant factors in the interpretation of statutes; *Sheikh Gulshan v. Sant Kumar*, A. I. R. 1963 S. C. 1832.

35. Grammatical Construction.

The ordinary rule of grammar on which construction is based cannot be treated as an invariable rule which must always and in every case be accepted without regard to the context. If the context definitely suggests that the relevant rule of grammar is inapplicable, then the requirement of the context must prevail over the rule of grammar: *Regional P. F. Commr v. S.K.M. Mfg Co.* A. I. R. 1962 S. C. 1536.

It is the duty of the Courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity while another will give effect to what common-sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if some words used in the same section, and even in the same sentence have to be construed differently. Indeed the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by so doing absurdity and inconsistency can be avoided: *Shamrao v District Magistrate*, 1952 S. C. R. 683, AIR 1952 SC 324.

It is the duty of the court in construing statutes to give effect to the intention of the legislature. If giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the legislature, which is to suppress the mischief the court can depart

from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief. *Karwar Singh v Delhi Administration*, A I R 1965 SC 87.

6 Express words to be construed strictly

The primary rule of the interpretation of statutes is that the language used and the words employed in a statute should be given the natural meaning. When the words are clear and plain the court is bound to accept the expressed intention of the legislature. The paramount duty of the judicial interpreter is to put upon the language used by the legislature honestly and faithfully its plain and rational meaning and to picture its object. When it is said that all penal statutes are to be construed strictly, it only means that the court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. The rule of strict construction requires that the language of a statute should be so construed that no case shall be held to fall within it which does not come within the reasonable interpretation of the statute. Moreover in penal statutes the principle that the provision should be construed in favour of the subjects is to be followed only where there is ambiguity otherwise the rule is that words should be given their natural meaning. *M V Joshi v M U Shimpri* A I R 1961 S 1494 Words which are clear and precise should be taken in their natural and ordinary sense. *Nagpur Corporation v Its Employees* A I R 1960 S C 675 The maxim *expressio unius est exclusio alterius* does not apply where the meaning is clear. *Prabhu Travels Co-operative Society Ltd v R T A* (1960) 3 S C R 177

The cardinal rule of construction of statutes is to read the statute liberally that is by giving to the words used by the legislature their ordinary natural and grammatical meaning. If however such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible the court must adopt the ordinary rule of literal interpretation. This is the golden rule of interpretation. *Jugal Kishore v Raw Cotton Co* A I R 1955 S C 3/6 1955 S C R 1369 *Anwar Singh v State of Rajasthan*, 1955 S C R 303 A I R 1955 S C 504

37 Back ground of statute

If the words used in a statute are not clear or are ambiguous it may be possible to interpret them in the light of the back ground of the statute. If by doing so the ambiguity ceases to exist the back ground may be very helpful guide. *State of West Bengal v B K Mondal and Sons* A I R 1962 S C 729 Previous material which may lead to a particular legislation is always a good guide. *State of Madras v Raja Gopalan* A I R 1955 S C 817

38 Harmonious Construction

Harmonious Construction requires that one provision should be read as controlled and qualified by the other. *Shankar Prasad Singh Deo v Union of India* 1952 S C R 89 of the language of the Article is plain and unambiguous and admits of one meaning alone the duty of the court is to adopt that meaning alone. But if two meanings are possible the court should try to harmonise the two. *State of Punjab v Ajai Singh* 1953 S C R 254

*See the observation made by Lord Atkin in *Ladore v Bennett* 1939 A C 462 which was held valid in *Gorindan Sellappaiah Nayar v Panchi Banda Mudraayake* 1959 A C 514

39. Interpretation defeating the object to be avoided

An interpretation which would defeat the object of the legislature should not be adopted: *Asia Industries v. Sarup Singh* A.I.R. 1966 S. C. 346. Words which are clear and precise are to be given their natural meaning. If the court has to supply words to make the meaning clear, it should prefer construction which is in more consonance with reason and purport: *Ramaswami Nader v. State of Madras*, A.I.R. 1958 S. C. 255.

LEGISLATIVE PROCEEDINGS

40. Reports of drafting committee may be referred.

While interpreting a constitutional provision the report of the drafting committee may be referred to. But this report cannot be used to control the meaning of the particular provision but it may be looked at in case of ambiguity. Though it would be improper to take into consideration the individual opinions of members of Parliament or convention or Constituent Assembly to construe the meaning of a particular clause yet when a question arises whether a certain phrase or expression was up for consideration at all or not, a reference to the debate may be helpful and may be permitted. The question that arose in the case was as to whether the doctrine of "due process of law" as known to American Constitution can be applied in India or not. After discussing the debates the court came to the conclusion that this doctrine was not adopted by the Constituent Assembly. But resort to these sources should be had after great caution and when latent ambiguities are to be resolved: *Gopalan v. State of Madras*, A. I. R. 1950 S. C. 2, 1950 SCR 85.

41. Speech made in the course of debate not helpful.

A speech made in the course of the debate on a bill cannot be of much help in the interpretation of constitution. It could at best be indicative of the subjective intent of the speaker, but it cannot reflect the inarticulate mental process lying behind the majority vote which carried the bill. It could not be said that the minds of all those who voted were in accord with the speaker. The court can only search for the objective intent of the legislature primarily in the enactment aided by such historical material as reports of statutory committees, preambles etc. etc.: *Gopalan v. State of Madras*, A. I. R. 1950 SC. 27, 1950 SCR 88, 1950 SCJ. 174.

42. Statements and objects in a bill may be looked at to see the circumstances under which an act was passed.

The statement of the objects and reasons appended to a bill is not admissible as an aid to the construction or interpretation of a statute yet these may be referred for a limited purpose of ascertaining the circumstances and conditions prevailing at the time which necessitated the passing of the particular law: *T. K. Musaliar v. Venkatachalam*; A.I.R. 1956 S.C. 246 1955 (2) S.C.R. 1196.

*Reference however may be made to the Privy Council decision in *Administrator General of Bengal v. Prem Lal Mullick* 22 L. A. 107; 22 Cal. 788 P.C. where reference to the proceedings of the legislature which resulted in the passing of the Act was not considered legitimate in the construction of a particular statute. To the same strain is the decisions given in *Municipal Council of Sydney v. Commonwealth* 1904 1 Com L. R. 208 and *United States v. Wong Kim Ark*, 169 U. S. 649 which lay down that individual opinion of members of the convention expressed in debates cannot be referred to for the purpose of construing the Constitution.

Though the ordinary rules of interpretation do not allow the use of legislative proceedings for the purposes of constitutional or other statutory provision but these can be referred to for the purpose of understanding the circumstances under which it was passed. In this particular case reference was made to the various reports and recommendations which led to the passing of the Sholapur Spinning and Weaving Company (Emergency Provisions) Act of 1950. After discussing all the reports it was observed

It was against this background that the Act was passed and it is evident that the facts which were placed before the legislature with regard to Sholapur Mill were of extraordinary character and fully justified the company being treated as a class by itself. There were other mills which were open to the charge of mismanagement but the criteria adopted by the Government in my opinion cannot be said to be arbitrary or unreasonable.

Chiranjit Lal v Union of India AIR 1951 SC 41 1951 SCR 853, 1951 SCJ 103

43 Preamble

The preamble is sometimes a good guide for finding out the meaning of the statute and is sometimes called a key for understanding it. *T K Musaliar v Venkalachalan* AIR 1956 SC 216 1956 (2 SCR 1196. Where the preamble of a statute reads as an act to consolidate and amend the law relating to the courts must construe the provisions of that act taking that act as a complete code in itself and exhaustive of the matters dealt with therein. *Ravalu Sabha Rao v Commissioner of Income Tax*, AIR 1959 SC 604 1956 SC 577

44 Speeches not extrinsic aids

The speeches made by members of the legislatures in the course of debate are not admissible as extrinsic aid to the interpretation of statutory provisions. Similar is the case with speeches made by the members of the Constituent Assembly. The reasons being those who did not speak may not have agreed with those who did and those who spoke might have differed from each other. *State of Travancore Cochin v Bombay Company Ltd* 1952 SC 1112, AIR 1952 SC 366

able historical material in ascertaining the reasons which induced the legislature to enact a statute but in interpreting the statute they must be ignored: *Gujarat University v. Shri Krishana*, A.I.R. 1963, S.C. 703. Statement of objects and reasons accompanying a bill, when introduced in Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the statute. These may be used for understanding the background and the antecedent state of affairs leading upto the legislation but these are not to be used as aids to the construction of the Act; *State of West Bengal v. Union of India*, A.I.R. 1963 S.C. 1241. The statement of objects and reasons can be referred to for the purpose of ascertaining the circumstances which led to the passing of the legislation and to find out what was the mischief which the legislation aimed at: *S.C. Prashar v. Usantren*, A.I.R. 1963 S.C. 1356.

46. Acceptance or rejection of amendments to a bill in the course of parliamentary proceeding does not form part of the pre-enactment history.

The argument that the acceptance or rejection of amendments to a bill in the course of parliamentary proceedings forms part of the pre-enactment history of a statute and as such might throw valuable light on the intention of the legislature when the language used in the statute admitted more than one construction was repelled by the Supreme Court. The reason why a particular amendment was proposed or accepted or rejected is often a matter of controversy. Where the legislature happens to be bicameral the second chamber may or may not have known of such reasons when it dealt with the measure. This sort of extrinsic aid cannot be used for the interpretation of statutes: *Aswini Kumar v. Arbinda Bose*; 1953 S.C.R. 1; A.I.R. 1952 S.C. 39.

47. Prior history may be looked at.

The history which lies behind an enactment may be looked into and is admissible to find out the meaning of law. The recourse to prior state of law, the evil sought to be eradicated, the process by which the law was evolved are admissible to find out the meaning of the Act: *State of West Bengal v. Nriendra Nath*, A. I. R. 1966 S. C. 447.

48. Report of Select Committee.

The Act cannot be interpreted by any reference to the bill. The language of a Minister proposing in parliament a measure which eventually becomes law is inadmissible. The report made by some outsider is even more removed from the value of as aid to interpretation because it may not be followed or accepted. The alterations made in the bill during its passage through the committee, the statements and objects and report of select committee cannot be legitimately taken into account. It would be wrong to say that every change in the phraseology introduced by way of amendment necessarily implies a change in the content of the provision or in its meaning for it entirely depends upon whether these words were merely meant to clarify or alter the then existing meaning: *R. P. Kapur v. Partap Singh*, A.I.R. 1965 S.C. 295.

49. Motive of parliament.

The Court in construing or interpreting the constitution or provisions of an enactment has to ascertain the meaning and intention of legislature from the language used in the statute itself and it is not concerned with the motives of Parliament. It is not for the courts to express, or indeed to entertain, any opinion on the expediency of a particular piece of legislation,

which the Act was passed in the case of *Chiranjit Lal v. Union of India* A.I.R. 1951 S.C. 41. In this case the validity of Sholapur Weaving and Spinnings Mills came up for consideration and after considering the whole matter the validity of the Act was sustained. The position so far as the speeches of members are concerned the Court is of the considered opinion that these cannot be used for interpreting the constitution or any other statutory enactment : *State of Travancore Cochin*, 1952 SCR. 1112. The argument being that the individual opinion of a member cannot be equated with the opinion of the whole House. Similarly the views expressed by the members of the Constituent Assembly cannot be used for the interpretation of the Constitution. *V. M. Syed Mohd v. State of Andhra*, AIR. 1954 S. C. 314. Some of the recent pronouncements go the extent that speeches by Minister while explaining the object and reasons is also irrelevant. The net result is that legislative proceedings cannot be used for the purpose of interpreting the Constitution or any other enactment but may be referred to, to understand the historical background.

MARGINAL NOTE, TITLE AND PREAMBLE

53. Marginal notes and headings of Chapters

Marginal notes and headings of a chapter cannot be used for the purpose of construing a statute, if the intention is otherwise clear. These cannot be used to restrict the plain terms of an enactment: *Income Tax commissioner v Ahmed Bhai Umarbhai and Co.* A. I. R. 1950 S.C. 134 : 1950 S.C.R. 605 [1950 SC]. 374. The marginal notes cannot control the meaning of the section if the language used is clear and unambiguous : *Nali Nakhga v Sham Sunder*, 1953 SC 148.

54. Title of statute.

The title of a statute is an important part of the Act and can be very useful in ascertaining its general scope and can be referred for the purpose of throwing light on its construction, although it cannot over-ride the clear meaning of the statute : **Aswini Kumar v Aravindra Bose* 1953, S.C.R., 1, A. I. R. 1952 S. C. 369. In re, *Kerala Education Bill*, A. I. R. 1958, S. C. 956, it was held that reference may be made to title and if possible the Court may deduce the policy of the legislature. But the title cannot control the meaning: *Bhika v. Charan Singh* A. I. R. 1959 S. C. 960.

55. Long title if helpfull.

Long title of the Act is a helpful guide in understanding the policy of the legislature. The value of long title was recognised by the Supreme Court in the case of *Bishambhar Singh v. State of Orissa*, 1954 S. C. R. 842. This question again cropped up when the Supreme Court was considering the Kerala Education Bill. This Bill had a long title i.e. 'to provide for the better organisation and development of educational institutions providing a varied and comprehensive educational service throughout the State, It was held that this long title lays down enough policy for the guidance of the executive and no attack can be made on the Bill on that score : *In re Kerala Education Bill*, A. I. R. 1958 S. C. 956.

56. Heading of sections.

If there is any doubt while interpreting words in the section, the heading certainly helps to resolve the doubt. The headings prefixed to sections or set of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but may explain ambiguous words : **Bhika v. Charan Singh*, A. I. R. 1959 S. C.

*See Maxwell on the Interpretation of Statutes, 9th edition p. 44.

if it is satisfied that it was within the competence of the legislature which enacted it, nor will it allow itself to be influenced by any consideration of policy for these be wholly outside its sphere *R.M.D.C. Pet LII v. State of Mysore* A.I.R. 1962 S.C. 534. *In *Naryan Deo v. State of Orissa* 1954 S.C.R. 1, Mukherjea J. as he then was, while dealing with the doctrine of colourable legislation observed

It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bonafides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law the motives which impelled it to act are really irrelevant. On the other hand if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power. Thus motive is not relevant so far interpretation of statutes is concerned.

50 Statement of a Minister

Statute as passed by Parliament is the expression of the collective intention of the legislature as a whole and any statement made by an individual, albeit a minister of the intention and objects of the Act cannot be used to curtail the generality of words used in the statute. Like statement of objects and reasons it can be used only to understand the antecedent state of affairs leading up to the legislation. It cannot cut down the meaning of the words are otherwise clear. *State of West Bengal v. Union of India*, A.I.R. 1963 S.C. 1241.

51 Wisdom of Legislature

The court has no concern with the wisdom of the legislature. Whether the tax imposed is excessive or not is a question with which the courts are not concerned. To allow the members of the Bench to express their opinions as to the matters which are exclusively within the purview of the legislature would be a dangerous precedent. *R. B. Dulla v. ST & Tribunal*, A.I.R. 1959 S.C. 895.

52 Reference to legislative proceeding if valid

The question as to whether reference can be made to legislative proceedings for the interpretation and construction of statutes first came up for consideration before the Supreme Court in the *Gopalan's Case* 1950 S.C.R. 68 A.I.R. 1950 S.C. 27. Where the court held that historical matters like reports etc may be considered if the words are not clear. Legislative proceedings were indeed referred to for understanding the circumstances under

*See the observations made by Gwyer C.J. in 1939 F.C.R. 18 which were approved by the Supreme Court in *R.M.D.C. (Mys) Pet LII v. State of Mysore* A.I.R. 1962 S.C. 492.

†In this case the decision of the Judicial Committee in *Attorney General of Alberta v. Attorney General of Canada* A.I.R. 1939 P.C. 53 was referred to. Our Supreme Court however refused to consider the quantum of taxation and the further question as to whether the quantum of taxation would ruin the business of appellant on the ground that no evidence was adduced in the case and further that the question was not raised in the courts below.

solve any ambiguity or to fix the meaning; but it cannot be used to eliminate as redundant or unintended the operative provisions of law: *State of Raj. v. Leela* A. I. R. 1965 S. C. 1296; *Buruakur Coal Co. v. Union of India* A. I. R. 1961 S. C. 954.

DECISIONS OF OTHER COUNTRIES

60. Analogous provision in Constitution of another country if the language is different.

When the words used in two constitutions are different it would be against the ordinary canons of construction to interpret the provision of our Constitution by taking the help of the decisions of the other Constitution. Because sometimes the political set up under which the different constitutions are framed are entirely different. In this case it was said that the "due process" clause as known to American Constitution cannot be used in India: *Gopalan v. State of Madras*, A.I.R. 1950 SC 27; 1957 SCR 88 1950 S.C.J. 174. The provisions of the Indian Income Tax Act are not in *pari materia* with those of the English Income Tax Statutes so that decisions of the English Act are in general of no assistance in construing the Indian Acts; *Commissioner of Income Tax v. South India Pictures*, AIR 1956 SC 492, 1956 S.C.R. 199.

61. American constitutional terms not to be imported unnecessarily.

In interpreting the Indian Constitution, the Courts should go by the plain words used by the makers of the Constitution. The importing of foreign notions as to the interpretation of Constitution can make the task more difficult. The terms police power as known to American Constitution cannot be of much help for interpreting Article 31 of the Indian Constitution which terms are of variable and indefinite connotation in American law and use of these terms can make the task of interpretation more difficult: *Chiranjit Lal v Union of India*, A I.R. 1951 S.C. 41; 1950 S.C.R. 869; 1951 S.C.J. 103. The Courts cannot derive any assistance from decisions which deal with other laws made in other countries to deal with situations that may not arise in India: *Partap Singh v Shri Krishna Gupta*, 1956 S.C. 140; 1956 (2) S.C.R. 1029.

62. English decisions where statute is based on English law.

Where an Indian Act is based on English statute or corresponds with it, the decisions given by English court may be followed. This was the majority view of the Supreme Court. Subba Rao J. (as he then was) who gave the minority judgment observed thus:

"The court cannot fill a lacuna, that is the province of legislature. The second rule of construction equally well settled is that a court cannot construe a section of a statute with reference to another, unless later is in *pari materia* with the former. It follows that decisions made on a provision of a different statute in India or elsewhere will be of no relevance, unless the two statutes are in *pari materia*. Any deviation from this rule will destroy the fundamental principle of construction, namely that the duty of a court is to ascertain the express intention of the legislature. The English decisions therefore must be kept aside in construing the relevant provisions of the Indian statute": *Assistant Collector of Customs v. Sita Ram* A. I. R. 1966 S.C. 955.

Where the terms of an Indian statute are plain, and express there is no need to refer to the English decisions; *Sales Tax Officer v. K.L.M.L.*, A. I. R. 1959 S. C. 135. .

960* Headings of sections or marginal notes sometimes may furnish good clue to the meaning of the legislature *Bengal Immunity Co v State of Bihar*, A I R 1955 S C 661

57 Preamble

The function of the preamble is to explain certain facts which are necessary to be explained before the provisions contained in the Act can be followed. It is a sort of introduction to the statute and is many a times very helpful to understand the policy and legislative intent. *In re Kerala Education Bill* A I R 1958 S C 956. If any doubt arises from the terms employed by the legislature the preamble has always been held to be a safe guide for understanding the intention of the legislature. The Supreme Court has called the preamble as a key to open the mind of the makers of the Act. *In re Berubari Union* A I R. 1960 S C 845. But this does not mean that the preamble is to override the express provisions of the Act and it is not to be considered as the source of power. *Berubari Union* *In re* A I R 1960 S C 845. It is however observed by the Supreme Court in *Bishambhar Singh v State of Orissa* A I R. 1954 S C 139 which decision was approved by the Court in *In re Kerala Education Bill* A I R 1958 S C 956 that Courts may construe the ambiguous words in a sense so as to carry out the purposes of the Act. But if the words are clear the preamble is not of much help. *Mafizpur Zamindar Co v State of Bihar* A I R 1962 S C 661. The Court cannot start with the Preamble for the interpretation of statutes. It has only limited application when there is ambiguity. *Burrahar Coal Co v Union of India* A I R 1961 S C. 954.

58 Preamble not to be used when words clear

A preamble is a key to the interpretation of a statute but is not ordinarily an independent enactment conferring rights or taking them away and cannot restrict or widen the enacting part which is clear and unambiguous. The motive for legislation is often reflected in the preamble but the remedy may extend beyond the cure of the evil intended to be removed. No resort to the preamble would be justified in interpreting the provisions in the Act when the words used in it are clear and unambiguous. *R Venkatswami Naidu v Narasimha Narayana* A I R 1966 S C 361. But where the enacting part is ambiguous the preamble can be referred to to explain and elucidate it. *Burrahar Coal Co v Union of India* A I R 1961 S C 954.

59 Preamble or title cannot make the words redundant

It is not permissible to omit or delete words from the operative part of an enactment which have meaning and significance in their normal connotation merely on the ground that according to the view of the Court it is inconsistent with the spirit of the enactment. Unless the words are unmeaning or absurd it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of the statute on the very elusive ground that their ordinary meaning will lead to consequences which are not in accord with the notions of propriety or justice entertained by courts. If there is repugnancy the court may prefer one interpretation to another after taking into consideration the general conspectus of the provisions. But it is wrong to depart from the natural meaning or to reject words for reason that they do not accord with the context in which they occur in the preamble or in the long title. The preamble may be used to

* See Maxwell on Interpretation of Statutes 10th Edition, page 50

Ramaswami Nader v. State of Madras, A.I.R. 1958 S.C. 255.

66. Court is not to lay down standard for legislature.

The Court is only concerned with the interpretation of a statute and while doing so it should not lay down any standard which the legislature ought to follow. The Court is only concerned to interpret the law and if it is valid to apply the law as it finds it and not to enter upon a discussion as to what the law should be; *Purshottam v. B. M. Desai*, A. I. R. 1956 S.C. 20, (1955) 2 S.C.R. 887.

67. Court should keep the scope of enquiry narrow.

In dealing with constitutional questions courts should be slow to embark upon an unnecessarily wide or general enquiry and should confine their decisions as far as may be reasonably practicable within the narrow limits of the controversy arising between the parties in the particular case. *Atiabari Tea Co. Ltd. v. State of Assam*, A. I. R. 1961 S. C. 232.

68. Court cannot re-cast provision.

The courts should not embark upon the task of enacting legislation in the guise of construction. A statute is designed to be workable and the interpretation thereof should be to secure that object unless curial omission or clear direction makes that end unattainable. It is not the function of the courts of law to give to the words a strained and unnatural meaning or to add to the words of the statute certain words which will change the scope of the Act. **Income Tax Commissioner v. Elphinstone & W. Mills*, A. I. R. 1960 S. C. 1016, *Income Tax Commissioner v. Khalan Makanji & W. Co.*, A. I. R. 1960 S. C. 1923 See also *Commissioner of Income Tax v. Tej Singh*, A. I. R. 1950 S. C. 352.

A court must construe a section in a way which would make it workable. A statute should never be added or subtracted from without utmost necessity *Shyam Kishori Devi v. Patna Municipal Corporation*, A. I. R. 1966 S. C. 1678. A statute ousting the jurisdiction of a civil court should be strictly construed; *Abdul v. Bhawani*, A. I. R. 1966 S. C. 1718.

69. Interpretation should not be done in vacuo.

While interpreting the provisions of the Constitution, the courts must keep in view that the relevant provisions are not to be read in vacuo but as occurring in a single complex instrument in which one part may throw light on the other. *Atiabari Tea Co. v. State of Assam*, 1961 S. C. 232.

MANDATORY AND DIRECTORY PROVISIONS

70. Mandatory and directory provisions-General.

The tendency towards giving more weight to technicalities while interpreting the Constitution should be deprecated. It is the substance that

*The observations made by Lord Esher, M. R. in *Curtis v. Sturine* (1889) 22 Q. B. D. 312 who warned against doing by construction what only a legislature could do by enactment are given in the following words "it is no doubt very easy for a Judge to say that he is introducing words into an Act only by way of construing it, while he is making a new Act" see also the observation made by Lord Dunsedin in *Whitney v. Commissioners of Inland Revenue* (1926) 10 Tax Cases 88 and those of Lord Reid in *Commissioner of Inland Revenue v. South Georgia Co. Ltd.* (1956) 37 Tax Cases 725 where there was failure on the part of draftsman to draft the Act properly.

†See the observations made in *James v. Commonwealth of Australia* 1936 A. C. 578.

ferred upon a public authority coupled with an obligation, the word 'may' which denotes discretion should be construed to mean a command. Sometimes the legislature uses the word 'may' out of respect or deference to the high status of the authority on whom the power or obligation is intended to be conferred or imposed. If a construction which is not obligatory makes the word 'may' redundant the word may should be interpreted as 'shall': *State of Uttar Pradesh v Jogendra Singh*, A.I.R. 1963 S.C. 1613.

75. Absence of word 'shall' not to be conclusive in deciding the question.

The employment of the auxiliary verb 'shall' is inconclusive and similarly the mere absence of the imperative is not conclusive either for the determination of mandatory or directory nature of the clause. The question whether any requirement is to be regarded as mandatory or directory has to be decided not merely on the basis of any specific provision which sets out the consequences of the omission to observe the requirement but on the purpose for which the requirement has been enacted, particularly in the light of the other provisions of the act and the general scheme thereof. One test may be to see whether the requirement insisted on is for safeguarding the right of liberty of person or of property which the action might involve: *Collector of Monghyr v Keshwar Prasad* A.I.R. 1962 S. C. 1964. 'Shall' may be construed as directory if the context otherwise requires. *Saink Motors v State of Rajasthan*, A.I.R 1961 S.C. 1480.

TAXING OR FISCAL STATUTES

76. Taxing Statutes

Taxing statutes imposing tax on subjects divisible in their nature which do not include in express terms subjects exempted by the constitution should not for that reason be declared wholly ultravires and void, for in such cases it is always feasible to separate taxes levied on authorised subjects from those levied on exempted subjects and to exclude the latter in the assessment of the tax. In such cases the statute itself should be allowed to stand, the taxing authority being prevented by injunction from imposing the tax on subjects exempted by the Constitution. The principle is that severability in such cases includes separability in enforcement and the principle should be applied in dealing with taxing statutes. *State of Bombay v. United Motors* 1953 S.C.R. 1049 : A.I.R. 1953 S.C. 252. The tendency of modern decisions is to narrow materially the difference between strict and beneficial construction. *Rajputana Agencies v Commissioner Income Tax* (1959) Supp. S.C.R. 176 : A.I.R. 1959 S.C. 265. Where the language used admits of more than one interpretation, benefit should be given to the persons assessed : *Commr I.T. v Karam Chand* A.I.R. 1960 S.C. 1175.

77. Fiscal statutes should be express and clear

A fiscal statute should be worded in clear language. If a case is not covered by the four corners of a statute, no liability can be imposed. *Banarasi Dass v. Income Tax Officer*, A. I. R. 1964. S.C. 1742.

Where the language used is unambiguous, the court may look at the intention of the legislature and may construe a fiscal statute in favour of subjects. But the court cannot proceed to make good deficiencies, if there be any : *Commr. Income Tax v. Karam Chand* (1960) 3 S. C. R. 727.

In interpreting a fiscal statute, the court shall interpret the statute as it stands and in case of doubt it shall interpret it in a manner favourable to tax payer. In construing a taxing statute, the court is not justified in

should be given more importance than the mere form. Some rules are vital and go to the root of the matter. They cannot be broken. Others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rule read as a whole and provided no prejudice is caused. When the legislature does not make any distinction between directory and mandatory provisions, the courts should do it and in doing so the courts should exercise a nice discrimination, sort out one class from the other along broad based commonsense lines. It is well settled that absolute enactment must be obeyed absolutely or fulfilled exactly, but it is sufficient if a directory provision is obeyed or fulfilled substantially. *Partap Singh v. Shri Krishna Gupta*, 1456 S. C. 140 1956 (2) S. C. R. 1029 : 1956 ~. C. J. 143. A provision of a statute is not mandatory unless the non-compliance with it is made penal. *Jagan Nath v. Jasant Singh* A. I. R. 1955 S. C. 210. See also *Harari Mal v. I. T. Officer*, 1963 S. C. 20 (1965) 2 S. C. J 256

71 Courts should determine the matter.

It is for the courts after carefully examining both the language and scope of the Act and the policy underlying it to determine whether the provisions are mandatory or directory. There is no universal rule to aid in determining whether mandatory enactment shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the courts to try to get at the real intention of the legislature by carefully considering the whole scope of the statute to be construed*. *H. N. Risikid v. State of Delhi*, 1955 S. C. R. 1150 A. I. R. 1955 S. C. 190.

73. 'Shall when mandatory

The question whether a particular provision of a statute which on the face of it appears mandatory in as much as it uses the word 'shall' or is directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making that provision, the serious or general inconvenience or injustice to persons resulting therefrom whether the provision is read one way or the other the relation of the particular provision to other provision dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or not. *R. B. Sugar Co. v. Rampur Municipality*, A. I. R. 1965 S. C. 895.

73 Use of word may, effect of

The use of the word 'may' is not conclusive or decisive for determining as to whether a statute is mandatory or directory. The expression 'may' has a varying significance having regard to the content in which this word appears. In some context it is purely permissive, in other it may confer a power and make it obligatory upon person invested with the power to exercise it as laid down in *Societe de Traction v. Kanani Engg. Co.* A. I. R. 1964 S. C. 558

74 May-may mean shall

The word 'may' generally does not mean 'shall' or 'must' but if the context so requires it may mean 'shall' or 'must'. Where a discretion is con-

*The observation made by Lord Campbell in *Liverpool Borough Bank v. Turner* (1861) 30 L. J. Ch. 379 (a) were approved by the Supreme Court.

and Distributing Co. v. Belgaum Borough Municipality, A.I.R. 1963 S.C. 906.

81. No equity.

In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can a taxing statute be interpreted on any presumption or assumption. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly said. A thing which is not express cannot be implied nor is it possible to supply assumed deficiency. The taxing statute must be clear and express. There is no equity in its favour: *Sales Tax Commissioner v. Modi Sugar Mills*, A.I.R. 1961 S.C. 1047.

82. Interpretation to be in favour of citizen.

Where the taxing law infringes Article 14, the same will be interpreted in favour of the citizen. Thus if no procedural machinery is provided for assessment and levy of tax, the law will be struck down. *Rai Ram Krishna v. State of Bihar* A.I.R. 1963 S.C. 1667 : (1964) S.C.R. 897.

83. Penal Statutes to be interpreted liberally.

It is the duty of the courts to interpret the words of a penal statute liberally, especially when the language used is ambiguous so that they may not become traps for honest, unlearned in the law and unwary citizens. If there is honest and substantial compliance with an array of puzzling direction that should be enough even if on some hypercritical view of the law other ingenious meaning can be derived. *Mustak Hussain v. State of Bombay* 1953 S.C.R. 325 A.I.R. 1953 S.C. 273.

84. Penal statute-actual meaning to be given effect to.

A statute which creates an offence and imposes a penalty of fine and imprisonment must be strictly construed in favour of subjects. In the case of such statutes as have been termed as penal statutes the courts are concerned with what has been actually said in the statute and what is the language employed and not what might possibly have been said. *W.H. King v. Republic of India*, 1932 S.C.R. 418 A.I.R. 1952 S.C. 156.

85. Penal statutes in general.

The rule of strict interpretation in favour of accused is not of universal application and must be considered along with other rules of interpretation. If the object of the legislature is defeated by giving liberal interpretation, strict interpretation has to be given. *Chief Inspector of Mines v. K.G. Thapar*, 1952, (1) S.C.R. 9 ; A.I.R. 1961 S.C. 858. Where penalties for infringement are imposed, it is not legitimate to stretch the language of a rule, however, beneficial its language beyond the fair and ordinary meaning of its language may be. It is well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision the court must lean upon that construction which exempts the subjects from penalty rather than one which imposes penalty. **Tola Ram v. State of Bombay*, A.I.R. 1955 S.C. 486.

86. General and Special Provisions.

It may be said that where a special provision and a general provision are inserted which cover the same subject matter, a case falling within the words of the special provision must be governed thereby and not by the terms of the general provision. It may also be said that where a general intention is expressed and the act expresses also a particular in-

*See the decision given by lord Macnaughtan in *L. & N. Rly. Co. v. Berriman*, 1942 A.R. 278 at 2295.

and Distributing Co. v. Belgaum Borough Municipality, A.I.R. 1963 S.C. 906.

81. No equity.

In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can a taxing statute be interpreted on any presumption or assumption. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly said. A thing which is not express cannot be implied nor is it possible to supply assumed deficiency. The taxing statute must be clear and express. There is no equity in its favour: *Sales Tax Commissioner v. Modi Sugar Mills*, A.I.R. 1961 S.C. 1047.

82. Interpretation to be in favour of citizen.

Where the taxing law infringes Article 14, the same will be interpreted in favour of the citizen. Thus if no procedural machinery is provided for assessment and levy of tax, the law will be struck down. *Rai Ram Krishna v. State of Bihar* A.I.R. 1963 S.C. 1667 : (1964) S.C.R. 897.

83. Penal Statutes to be interpreted liberally.

It is the duty of the courts to interpret the words of a penal statute liberally, especially when the language used is ambiguous so that they may not become traps for honest, unlearned in the law and unwary citizens. If there is honest and substantial compliance with an array of puzzling direction that should be enough even if on some hypercritical view of the law other ingenious meaning can be derived. *Mustak Hussain v. State of Bombay* 1953 S.C.R. 325 A.I.R. 1953 S.C. 273.

84. Penal statute-actual meaning to be given effect to.

A statute which creates an offence and imposes a penalty of fine and imprisonment must be strictly construed in favour of subjects. In the case of such statutes as have been termed as penal statutes the courts are concerned with what has been actually said in the statute and what is the language employed and not what might possibly have been said. *W.H. King v. Republic of India*, 1932 S.C.R. 418 A.I.R. 1952 S.C. 158.

85. Penal statutes in general.

The rule of strict interpretation in favour of accused is not of universal application and must be considered alongwith other rules of interpretation. If the object of the legislature is defeated by giving liberal interpretation, strict interpretation has to be given. *Chief Inspector of Mines v. K.C. Thapar*, 1932. (1) S.C.R. 9 ; A.I.R. 1961 S.C. 838. Where penalties for infringement are imposed, it is not legitimate to stretch the language of a rule, however, beneficent its language beyond the fair and ordinary meaning of its language may be. It is well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision the court must lean upon that construction which exempts the subjects from penalty rather than one which imposes penalty. *Tola Ram v. State of Bombay*, A.I.R. 1955 S.C. 496.

86. General and Special Provisions.

It may be said that where a special provision and a general provision are inserted which cover the same subject matter, a case falling within the words of the special provision must be governed thereby and not by the terms of the general provision. It may also be said that where a general intention is expressed and the act expresses also a particular in-

*See the decision given by lord Macnaughtan in *L. & N. Ry. Co. v. Berriman*, 1942 A.R. 278 at 2295.

tention, the particular intention is to be considered in the nature of exception. Similarly particular enactment is not repealed by a general enactment in the statute *State of Bombay v. United Motors*, 1953 S C R. 1069 A I R, 1953 S C 252. General words are not to be construed to alter the common law meaning. *State of Gujrat v. Shyam Lal*, A. I. R. 1965 S C 1251. A general later law does not abrogate an earlier special law by mere implication. *Generalia specialibus non derogant*, or in other words where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, it cannot be said that the earlier and special legislation is indirectly repealed, altered or abrogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases, it is presumed to have only general cases in view and not particular cases which have been already otherwise provided for by the special law. *Partap Singh v. Manmohan Dey*, A. I. R. 1966 S C. 1931.

87. *Ejusdem Generis*.

The doctrine of *ejusdem generis* means, where particular words are followed by general, that the general words should not be construed in the widest sense but should be read as applying to objects, persons or things of the same general nature as those specifically enumerated, unless there is clear manifestation of a contrary purpose. In other words, where general and special words which are capable of analogous meaning are associated together, they take colour from each other and the general words are restrained and limited to a sense analogous to the less general.

But before the doctrine of *ejusdem generis* is made applicable, there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted. *Jagdish Chandra v. Kajaria Traders*, A. I. R. 1964 S C. 1832.

The rule of *ejusdem generis* applies where a general word follows a particular and specific words of the same nature as itself, but where there is no genus or category indicated by the legislature the rule has no application. *Raja Bhanu Partap Singh v. Assistant Custodian*, A. I. R. 1966 S C. 245.

Before making use of the rule of *ejusdem generis*, it should be seen that it confined within the narrow limits. General or comprehensive words should receive their natural meaning unless they are clearly restrictive in their intendment. *State of Bombay v. Ali Gulshan* 1956 2 S C. R. 867 A. I. R. 1955 S. C. 810.

The true scope of the rule of *ejusdem generis* is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by general words which follow. *Amar Singh v. State of Rajasthan*, 1955 (3) S C R. 303 A. I. R. 1955 S. C. 204.

88. Special provision to prevail over general provision.

If there is apparent conflict between two provisions, one which is special and the other which is general, the special must prevail over the general. *Union of India v. India Fisheries (P) Ltd.*, A. I. R. 1966 S C 35 at P. 37, *Danji v. L. I. C. India*, A. I. R. 1968 S C 135. *Income Tax Commissioner v. Shalad Nand & Sons* 1966 S C 1342. General words must be confined to analogous things where specific words form a disti-

not genus or category : *K. K. Kochunni v. State of Madras*, A. I. R. 1960 S. C. 1182.

A general later law does not abrogate an earlier special law by mere implication. *Generalia specialibus non derogant* or in other words where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, it cannot be said that the earlier and special legislation is indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view and not particular cases which have been already otherwise provided for by the special law : *Parlap Singh v. Manmohan Dey*, A. I. R. 1966 S. C. 1931.

A special provision should be given effect to the extent of its scope leaving the general provision to control cases where the special provision does not apply : *Raja Gopalachari v. Corporation of Madras*, A. I. R. 1964 S. C. 1172. A particular enactment is not repealed by general enactment in the same statute : *State of Bombay v. United Motors*, A. I. R. 1953 S. C. 252 ; 1953 S. C. S. 1069.

A court must construe a section in a way which would make it workable. 'A statute should never be added or subtracted from without almost a necessity' : *Shyam Kishori Devi v. Panna Municipal Corporation*, A. I. R. 1966 S. C. 1678.

89. Colourable legislation.

The constitution distributes the legislative powers amongst different bodies which have to act within their respective spheres marked out by specific legislative entries. The fundamental rights also place limitations on the right of the legislature to legislate. In the presence of these limitations questions do some times crop up whether the legislature, in a particular case, has not in respect to the subject matter of the statute or the method of enacting it transgressed the limits of its constitutional power. Such transgression may be patent, manifest or direct, but it may also be disguised, covert, indirect and latent. It is to the latter class of cases that the expression colourable legislation has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute, purported to act within the limits of its powers, yet in substance and in reality it transgressed the powers. The transgression being veiled by what appears on proper examination to be a mere pretence or disguise, where the law making authority is of a limited or qualified character it may be necessary to examine with some strictness the substance of the legislature for the purpose of determining what is that the legislature is doing. In other words it is the form that matters but the substance and if the substance or subject matter is something which is beyond the competence of that legislature, outward appearance would not save it from condemnation. The legislature cannot violate constitutional prohibition by employing an indirect method. In such cases the inquiry must be pinpointed on the true character of the legislation. For the purpose of such determination, the court should examine the effect of the legislation and take into consideration its object, purpose or design. But if on the face of an Act it is clear that the legislature intends thereby to legislate in reference to a subject over which it has no jurisdiction, yet if the enactment, clause of the

act bring the legislation within its powers the Act cannot be considered ultra vires *K C G Narayan Deo v State of Orissa* 1954 S C R 1 A I R. 1953 S C. 375

90 Doctrine of Fraud on Power.

This doctrine does not involve any question of bonafide or malafide on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law the motives which impelled it to act are really irrelevant. On the other hand if the legislature lacks competency the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power. The legislature may transgress the limits of its constitutional power by patent manifest or direct way or by indirect or disguised manner. The legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the constitution. The legislature cannot overstep the field of its competency directly or indirectly. The court will scrutinise the law to ascertain whether the legislature by device purports to make a law which though in form appears to be within its sphere in effect and substance reaches beyond it. If in fact it has power to make the law its motive in making the law are irrelevant. If the legislature outsteps or transgresses its legislative power it may become colourable legislation. But at the same time if for instance the compensation awarded for acquisition is illusory or the principles for ascertaining the same do not relate to the acquired property or if the adequacy of compensation is not justifiable the law may well come within the doctrine known as fraud upon the power. *Vajranch v Sp Dy Collector* A I R 1965 S C 1017 *Gajapati Narayan Deo v State of Andhra* 1959 S U P P 1 S C R 319

WAR TIME LEGISLATION

91 War time Legislation to be construed in favour of State

War time legislation which often has to be enacted hastily to meet a grave pressing national emergency in which the very existence of the State is at stake should be construed more liberally in favour of State than peace time legislation. *State of Bombay v Virudhar*, 1952 S C R 877 A I R 1952 S C 335

PROVISO EXEMPTION AND EXPLANATION

93 Explanations-value of

The description of a provision e.g. in the shape of explanation cannot be decisive of its true meaning. But when a provision is capable of two meanings the one which fits the description (explanation) which the legislature has chosen to apply to it according to sound canons of construction should be adopted provided of course it is consistent with the language employed in preference to the one which attributes to the provision a different effect from what it should have according to its description by the legislature. *State of Bombay v United Motors*, 1953 S C R 1069 A I R 1953 S C. 252

94 Proviso is sub-servient to main provision

A proviso to a section is sub-servient to the main provision of the statute. *S Asia v Sarup Singh* A I R. 1966 S C 341. Provisos are generally inserted to remove misapprehensions. *Madan Lal v Shree Clangedo Sugar Mills* A. I R. 1962 S C 1543

A proviso must be construed harmoniously with the main enactment. It is immaterial whether it is interpreted as restrictive of the main provision or as a substantive clause: *Commissioner of Income Tax v. Indo Mercantile Bank Ltd.*; A. I. R. 1959 S. C. 713; A. I. R. 1965 S. C. 1358. To ascertain the meaning of a section, it is not permissible to omit any part of it and the whole section should be re-conciled: *State of Bihar v. Hira Lal Kejriwal*, A. I. R. 1960 S. C. 47.

95. Proviso may be substantive.

The proper function of a proviso is to except or qualify something enacted in the substantive clause which but for the proviso would be within that clause. It may be ordinarily presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject matter of the proviso. But the question is one of interpretation and there is no absolute rule that the proviso must always be restricted to the ambit of the main enactment. Occasionally in a statute a proviso is unrelated to the subject matter of the preceding section or it contains extraneous matters and it may then have to be interpreted as a substantive provision, dealing independently with the matter specified therein and not as qualifying the main preceding section: *Ishwar Lal v. Mori Bhai* A. I. R. 1966 S. C. 459; *State of Orissa v. Debaki Debi* A. I. R. 1964 S. C. 1413.

96. Proviso may be Addendum.

The cardinal rule of interpretation is that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other: *R. D. Sons Ltd., v. Assistant Sales Tax Officer*, (1955) 2 S. C. R. 483; A. I. R. 1955 S. C. 765.

The proper function of proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso, would fall within the main enactment. It is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with subject which is foreign to the main enactment. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it relates. The proviso is to be construed harmoniously to the main enactment. A proviso to a particular provision of a statute embraces the field which is covered by the main provision. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment. But sometimes it may operate as addendum: *Income Tax Commissioner v. I. M. Bank* (1959) (Sup) 2 S. C. R. 339 A. I. R. 1959 S. C. 713; *Abdul Jabbar Butt v. State of Jammu and Kashmir*, 1957 S. C. R. 51.

97. Proviso may be looked at when the main provision is ambiguous.

Where the main provision is clear, its effect cannot be curtailed by the provision. But where the main provision is not clear, the proviso which cannot be considered to be a mere surplusage, can properly be looked into to ascertain the meaning and scope of the main provision; *Hindustan Ideal*

act bring the legislation within its powers, the Act cannot be considered ultra-vires. *K. C. G. Narayan Deo v State of Orissa*, 1954 S.C.R. 1 A I R. 1953 S.C. 375.

90. Doctrine of Fraud on Power.

This doctrine does not involve any question of bonafide or malafide on the part of the legislature. The whole doctrine revolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power. The legislature may transgress the limits of its constitutional power by patent, manifest or direct way or by indirect or disguised manner. The legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by fundamental rights created by the constitution. The legislature cannot overstep the field of its competency directly or indirectly. The court will scrutinise the law to ascertain whether the legislature by device purports to make a law which though in form appears to be within its sphere, in effect and substance reaches beyond it. If in fact, it has power to make the law, its motive in making the law are irrelevant. If the legislature outsteps or transgresses its legislative power it may become colourable legislation. But at the same time if for instance the compensation awarded for acquisition is illusory or the principles for ascertaining the same do not relate to the acquired property or if the adequacy of compensation is not justiciable the law may well come within the doctrine known as fraud upon the power. *Vajravel v Sp Dy. Collector*, A I R. 1965 S.C. 1017. *Gajapati Narayan Deo v State of Andhra*, 1959 S.U.P.P. 1 S.C.R. 319.

WAR TIME LEGISLATION

91. War time Legislation to be construed in favour of State

War time legislation which often has to be enacted hastily to meet a grave pressing national emergency in which the very existence of the State is at stake should be construed more liberally in favour of State than peace time legislation. *State of Bombay v Virukumar*, 1952 S.C.R. 877, A I R. 1952 S.C. 335.

PROVISO, EXEMPTION AND EXPLANATION

93. Explanations-value of

The description of a provision e.g. in the shape of explanation cannot be decisive of its true meaning. But when a provision is capable of two meanings, the one which fits the description (explanation) which the legislature has chosen to apply to it according to sound canons of construction should be adopted, provided, of course, it is consistent with the language employed in preference to the one which attributes to the provision a different effect from what it should have according to its description by the legislature. *State of Bombay v United Motors*, 1953 S.C.R. 1069, A I R. 1953 S.C. 252.

94. Proviso is sub-servient to main provision

A proviso to a section is sub-servient to the main provision of the statute. *S. Asia v Sarup Singh*, A I R. 1966 S.C. 341. Provisos are generally inserted to remove misapprehensions. *Madan Lal v Shree Chaugdeo Sugar Mills*, A. I. R. 1962, S.C. 1543.

at the date of the suit. Even before the days of Coke whose maxim 'new law ought to be prospective and not retrospective' is oft quoted, courts have looked with disfavour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different; and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which expressly or by clear intention takes in even pending matter, the court of trial or even court of appeal must have regard to an intention so expressed and the court of appeal may give effect to such a law even after the judgment of first instance. The distinction between laws affecting procedure and those affecting vested rights does not matter when the court is invited by law to take away from a successful plaintiff what he has obtained by a judgment : *Dayawati v. Inderjit*, 1966 S. C. 1423.

100. Retrospective effect.

A provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned : *S. S. Gadgil v. M/S Lal and Co.* A. I. R. 1965 S. C. 171.

101. Vested rights can be affected retrospectively.

Where vested rights are affected by any statutory provision, the said provision should normally be construed to be prospective in operation and not retrospective in operation unless the provision in question relates merely to a procedural matter. It is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action its acts, unless in express terms, apply to pending action. But the retrospective nature of the statute can be inferred from the content also : *Rafiqueunnissa v. Lal Bahadur*, A. I. R. 1964 S. C. 1511 ; *Dayawati v. Inderjit* A. I. R. 1966 S. C. 1423.

PARI MATERIA

102. Provisions not in Pari materia.

It is not safe to pronounce on the provisions of one Act with reference to the decisions dealing with other Acts which may not be in pari materia : *Hari Dass v. Commissioner of Police* A.I.R. 1956 S. C. 559 ; 1956 S. C. R. 506.

The provisions of the Indian Income Tax Act are not in pari materia with those of the English Income Tax statutes so that the decisions of the English Acts are in general of no assistance in construing the Indian Acts : *Commissioner of Income Tax v. South India Pictures*, A. I. R. 1956 S. C. 493, 156 S.C.R. 199.

Where an Indian Act is based on English statute or corresponds with it, the decision given by English court may be followed. This was the majority view of the Supreme Court. Subha Rao J. (as he then was) who contradicted observed thus:

"The court cannot fill a lacuna, that is the province of legislature. The second rule of construction equally well settled is that court cannot construe a section of a statute with reference to an other unless latter is in pari materia with the former. It follows that decision made on a different provision of a statute in India or elsewhere will be no relevance unless the two statutes are in pari materia. Any deviation from this rule will

to assume all those facts on which alone the fiction can operate "if you are bidden to treat an imaginary state of affairs as real you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which if the *putative* state of affairs had in fact existed, must inevitably have flowed or accompanied it". If a statute bids to imagine a certain state of affairs, it must be done fully and the imagination should not be allowed to boggle when it comes to the inevitable corollaries of that state of affairs *Income Tax Commissioner v. Teja Singh* (1959) Supp(1) S. C. R. 394 A. I. R. 1959 S. C. 352. - see also, *R. L. Arora v. State of U. P.*, A. I. R. 1964 S. C. 1210

108. Interpretation of entries.

While determining the scope of the area covered by a particular entry, the court must interpret the relevant words in the entry in a natural way and give the said words their widest interpretation. What the entries purport to do is to describe the area of legislative competence of the different bodies and it would be unreasonable to approach the task of interpretation in a narrow or restrictive manner: *Banarsi Dass v. Wealth Tax Officer*, A. I. R. 1965 S. C. 1387; *Navnit Lal v. Income Tax Commissioner*, A. I. R. 1965 S. C. 1375.

109. Entries to be liberally construed.

It is an elementary rule of construction that the words used in the Constitution conferring legislative power must receive the most liberal construction as if these are words of widest amplitude. They must be interpreted liberally so as to give effect to that amplitude. It would be out of place to put a narrow construction on legislative entries: *Jaggan Nath v. State of U. P.*, A. I. R. 1962 S. C. 1963. *Navinchandra v. Commr of Income Tax*, A. I. R. 1955 S. C. 58. The entries in the list in the seventh schedule should be so construed as to give effect to all of them and a construction which will result in any of them being rendered futile or otiose must be avoided. Where there are two entries, one general in character and the other specific, the former must be construed as excluding the latter: *Waverly Jute Mills v. Raymon & Co.*, A. I. R. 1963 S. C. 90

The rule of pith and substance is generally and more appropriately applied when a question arises as to the legislative competence of the legislature and it has to be resolved by reference to the entries to which the impugned legislation is referable. When there is conflict between two entries in the legislative list and legislation by reference to one entry would be competent but not by reference to another, the doctrine of pith and substance is invoked for the purpose of determining the true nature and character of the legislation in question. *Atiabari Tea Co v. State of Assam*, A. I. R. 1952 S. C. 232; *State of Bombay v. R. M. D. Chamarbongvala*, 1957 S. C. R. 874.

110. Doctrine of liberal construction and social legislation.

The liberal construction must ultimately flow from the words used by the legislature. If the words used are capable of two meanings, one which is shown patently to assist the achievement of the object of the Act, courts would be justified in preferring the constructions to the other which may not be able to assist the achievement of the objects of the Act, thus

*See the observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Boroughs Council*, 1952 A. C. 109, a part of which is reproduced above.

destroy the fundamental principle of construction, namely, the duty of a court is to ascertain the expressed intention of the legislature..... .. The English decision therefore must be kept aside in constructing the relevant provisions of the Indian statute" . *Assistant Collector of Customs v Sita Ram*, A. I. R. 966 S. C. 955.

PRESUMPTION

103 Repugnancy or Conflict between two parts presumption.

It is incumbent on court to avoid a construction which would render a part of the statute devoid of meaning or would lead to repugnancy . *Shri Bhadur Singh v State of U P*, A I. R 1953 S C 334 Where a provision admits of two constructions, a construction which would lead to repugnancy, absurdity, hardship and injustice may be avoided *Tirath Singh v Bachittar Singh*, A I R 1955 S. C 880 The presumption is always in favour of constitutionality of a statute *Gopalan's Case* 1950 S. C. R. 88 ; *Shri Ram v State of Maharashtra*, 1961 S C. 674

104. Presumption in favour of validity

The presumption is in favour of the constitutionality of a legislative enactment and it has to presume that the legislature understands and correctly appreciates the need, of its people. But when on the face of a statute, there is no classification at all and no attempt has been made to select any individual or group with reference to any differentiating attribute peculiar to that individual or group and not possessed by others this presumption is of little assistance to sustain the validity of the Act. To carry the presumption to the extent of holding that there must be some undisclosed and unknown reason for subjecting certain individuals to hostile and discriminatory legislation is to make the protection of Fundamental rights a mere rope of sand, *Ram Parsad v. State of Bihar* 1963 S C R. 1129 A. I. R. 1953 S C. 215

105. Interpretation should be in favour of constitutionality.

The presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the rights : *Charanjit Lal v. Union of India* A. I R 1951 S C 41 1950 S C. R 869 *Waverly Jute Mills v. Raymon & Co* 1933 S C. 90

106 Deeming provision

When a statute enacts that something shall be deemed to have been done which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical end. If the statute bids to treat an imaginary state of affairs as real, the courts must unless prohibited from doing so also imagine as real the consequences and incidents which, if the primitive state of affairs had in fact existed, must inevitably have flowed from or accompanied it. When the statute says that one must imagine a state of affairs it does not say that having done so one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs *State of Bombay v Pandurang*, 1953 S C R 773 , A I R 1953 S C. 245

107. Legal fiction.

In constructing a legal fiction, it would be proper and even necessary

where strict interpretation was given which was not favourable to the accused.

Order violating fundamental rights is to be given strict interpretation *Ananda v. Chief Secretary to Government of Madras*, A.I.R. 1963 S.C. 627. It is not a sound principle of construction to brush aside words in a statute as being in opposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. *Aswini Kumar v. Arabinda Bose*, 1953 S.C.R. 1 A.I.R. 1952 S.C. 366.

The cardinal rule of construction of statutes is to read the statute liberally that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible the court must adopt the ordinary rule of literal interpretation. This is the golden rule of interpretation. *Jugal Kishore v. Raw Cotton Co.* A.I.R. 1955 S.C. 376; 1955 S.C.R. 1369; *Amar Singh v. State of Rajasthan*, 1955 S.C.R. 303; A.I.R. 1955 S.C. 504.

111. Rule of Mechanical construction.

If on interpretation of a particular provision the court comes to the conclusion that the mechanical construction will defeat the object of the enactment, then the mechanical or literal construction should be abandoned in favour of a liberal construction which takes into account the bearing and purport of the relevant words used and considered in the light of other provisions and object of the Act. *Deputy Custodian v. Official Receiver*, A.I.R. 1965 S.C. 951. It is the duty of the court in construing a statute to give effect to the intention of the legislature. If giving alternate meaning to a word used by the draftsman particularly in a penal statute would defeat the object of the legislature, which is to suffer the mischief, the court can depart from the dictionary meaning or even the popular meaning of word and instead give it a meaning which will advance the remedy and suppress the mischief. *Kanwar Singh v. Delhi Administration*, A.I.R. 1965 S.C. 87. *Chief Inspector of Mines v. K. C. Thapar*, A.I.R. 1961 S.C. 838.

112. Pith and Substance.

The rule of pith and substance is generally and more appropriately applied when a question arises as to the legislative competence of the Legislature and it has to be resolved by reference to the entries to which the impugned legislation is relatable when there is conflict between two entries in the Legislative list and Legislation by reference to one entry would be competent but not by reference to another, the doctrine of pith and substance is involved for the purpose of determining the true nature and character of the legislation in question. **Atiabari Tea Co. v. State of Assam*, A.I.R. 1952 S.C. 232 *State of Bombay v. R. M. D. Chamarbongwala* 1957 S.C.R. 874.

113. Procedural law-Technical construction to be avoided.

A code of procedure which is designed to facilitate justice should not be given a technical interpretation. Too technical construction of a statute

*See the decision of Privy Council in *Prasulla Kumar Mukerjee v. Bank of Commerce* 74 I.C. 23 and *Subrahmanyam v. Mulliswami Gounder*, 1940 F.C.R. 188 where this doctrine was considered.

if only one construction is possible the liberal construction cannot be adopted *Puckingham and Carnatic Co., v Venkatasah* A I R 1964 S C 1282.

If the language used is capable of one meaning and that meaning fails to carry out intention of the legislature that provision has to be struck down if it is unconstitutional. A literal interpretation of a statute is not the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed in order to decide whether there is something implicit behind the words used which would control the literal meaning of the words used in a statute. The wide language of the statute can be controlled by taking help of the setting in which the words occur *R L Arora v State of Uttar Pradesh* A I R 1964 S C 1230 *Mysore State Electricity Board v Bangalore Cotton Mills* A I R 1962 S C 1128

Every law that takes away or impairs a vested right is retrospective. Every ex post facto law is retrospective. But an ex post facto law which only nullifies the rigour of a criminal law does not fall within the said prohibition. If such a law makes a provision to that effect though retrospective in operation it will be valid. The question whether such a law is retrospective and if so to what extent depends upon the interpretation of a particular statute having regard to the well settled rule of construction. The tendency of modern decisions on the whole is to narrow materially the difference between what is called strict and beneficial construction. All statutes are now construed with more attentive regard to the language and Criminal statutes with a more rational regard to the aim and intention of the legislature than formally. It is unquestionably right that distinction should not all together be erased from the judicial mind for it is required by the spirit of our free institutions that interpretation of all statutes should be favourable to the personal liberty and this tendency is still evinced in a certain reluctance to supply the defects of language or to elude the meaning of the obscure passage by strained or doubtful influence. The effect of the rule of strict interpretation might almost be summed up in the remark that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which cannot be solved the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be construed according to expressed or manifest intention and that all cases within the mischief aimed at are if the language permits to be held to fall within its remedial influence. *Rattan Lal v State of Punjab* A I R 1965 S C 444. The general rule of interpretation which is common to statutory provisions as well as constitutional provisions is to find out the expressed intention of the makers of the constitution from the words of the provisions themselves. It is also equally well settled that without doing violence to the language used a constitutional provision shall receive a fair liberal and progressive construction so that its true objects might be promoted *Mohi Ram v N E Frontier Railway* A I R 1964 S C 600.

The language of a special provision should be constructed strictly. If the words are capable of two constructions one which is more favourable to the accused than the other the court should accept the one which is favourable to the accused. But at the same time there is no justification for adding any words to make provisions of law less stringent than the legislature has made it. *Sajjan Singh v State of Punjab* A I R 1964 S C 454. See however *Chief Inspector of Mines v K C Thapar* A I R 1961 S C 838,

need to refer to the amending act at all : *Sham Rao v. District Magistrate* 1952 S.C.R. 683 A.I.R. 1952 S.C. 324.

Ordinarily a court of appeal cannot take into account a new law brought into existence after the judgment appealed from has been delivered because the rights of litigants in an appeal are determined under the law in force at the date of the suit. Courts have looked with disfavour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different, and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language which expressly or by clear intendment takes in even pending matter, the court of trial or even the court of appeal must have regard to an intention so expressed and the court of appeal may give effect to such a law even after the judgment of first instance. The distinction between laws affecting procedure and those affecting vested rights does not matter when the court is invited by law to take away from a successful plaintiff what he has obtained by a judgment. *Dayawati v. Inderjit* A.I.R. S.C. 1423.

116. Repealing Act repealed by another Act-effected.

Under the English Common Law when a repealing enactment was repealed by another statute, the repeal of the second Act revived the former Act ab-initio. But this practice ceased to exist after 1850 and now if an Act repealing a former Act is itself repealed, the last repeal does not revive the Act repealed before unless there is a provision to that effect. The present rule in English is the result of changes made by the Interpretation Act of 1889. The Supreme Court, however, held that the Court is not bound by the provisions of any English statute and can apply English Common Law rule if it appears to be reasonable and proper. In this case it was held that a firman issued by Nizam of Hyderabad on 7th of September, 1949 did not repeal the earlier one. *Ajmerum Nissa v. Mahboob Begum*, A.I.R. 1955 S.C. 352.

117. Illustration though not exhaustive cannot expand or curtail the meaning.

The illustration given along with a statutory provision neither curtails nor extends the meaning of the clause under which it finds place. At the same time an illustration is not exhaustive : *Shambulal Mehra v. State of Ajmer*, A.I.R. 1956 S.C. 404; 1956 S.C.R. 199 : 1956 S.C.J. 429. The courts should primarily look at the language employed in a particular provision and give effect to it. *Ram Kishan v. State of Delhi* A.I.R. 1956 S.C. 476 : 1956 S.C.R. 182. *It is not to be readily assumed,

*The Judicial Committee has observed as follows in : *Mohomed Syedol Ariffin v. Yeoh Ooi Gork*, A.I.R. 1916 P.C. 242 as to the value of illustrations "It is the duty of the Court of Law to accept, if that can be done, the illustrations given both of relevance and value in the construction of text. The illustration should in no case be rejected because they do not square with the ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections been expressly furnished by the legislature as helpful in the working and application of the statute, should not thus be impaired".

which leaves no room for reasonable elasticity of interpretation should there fore be guarded against provided justice is done to both the parties lest the very means designed for the furtherance of justice should be used to frustrate it. The laws of procedure in India are grounded on the principle of natural justice which requires men should not be condemned unheard that decision should not be reached behind their back that proceedings regarding the lives and property of citizens should not be continued in their absence and they should not be precluded from participating by the interpretation put on procedural laws. *Sangram Singh v Election Tribunal* 1955 S C 425

It is a sound rule of construction that procedural enactment should be construed liberally and in such manner as to render the enforcement of substantive rights effective. *Veluswami v Raju Nair* (1953) Supp 1 S C R 673 17 E L R 181

Provision dealing with procedural matter pertaining to execution if yields to two conflicting constructions the court should adopt a construction which maintains rather than disturbs the field of execution. *Mahij Bhai v Afain Bhai* A I R 1955 S C 1477

114 Procedural Laws is retrospective

Every statute including the constitution is deemed to be prospective unless expressly or by necessary implication it is made to have retrospective effect. *Keshvan v State of Bombay* A I R 1951 S C 228 But procedural law may have retrospective effect. *Anant Singh v State of Bombay* A I R 1958 S C 915 *Daya Wali v Inderjit* A I R 1986 S C 1423 *Rafiquequeensesa v Lal Bahadur* A I R 1961 S C 1511

115 Amendment applies to pending proceeding

The contention that an enactment can only take away vested rights of action for which legal proceedings have been commenced if there are in the enactment express words to that effect is not very sound. If saving were to be implied in favour of pending proceedings then the provisions of the statute would largely be rendered nugatory. But the legislature should make use of clear language to make the operation of an amendment retrospective to proceedings commenced before the passing of the statute. **Shyabu ddin v Municipality* 1955 S C R 1268 A I R 1955 S C 314

When an Act applies another Act to some territory the latter Act cannot be taken to be incorporated in the former Act. It may be otherwise if there are words to show that the earlier Act is to be deemed to be re enacted by the new law. *Rajputana Mining Agencies v Union of India*, A I R 1961 S C 56

The construction of an Act which has undergone amendments is governed by technical rules. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself or a part of itself into the earlier one the earlier Act must thereafter be read and construed except where that would lead to a repugnancy, inconsistency or absurdity as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no

*The observation made by Lord Reading C J in the case *The King v Southampton Income Tax Commissioner* (1916) 2 K B 249 and of the Judicial Committee in *K C Mukerjee v Mst Ramratan Kaur* A I R 1936 P C 49 were approved by the Supreme Court in the case

which is more favourable to the employees should be adopted when legislation deals with employees : *Alambic Chemical Works v. Workmen*, A. I. R. 1961 S. C. 647.

The interpretation of a statute may be done in the light of the ratio of the legislation. Where the ratio of the legislation is social interest, in the health of workers who form an essential part of the community and in whose welfare, therefore, the Society is vitally interested, the legislation should be interpreted in the light of the same : *Manohar Lal v. State of Punjab*, A. I. R. 1961 S. C. 418.

122. Section may be prospective.

A section may be prospective in some part and retrospective in other parts. While the ordinary rule is that substantive rights should not be held to be taken away except by express provision or clear implication, many acts though prospective in form, have been given retrospective operation, if the intention of the legislature is apparent. This is more so, in the case of acts which are passed to protect the public interest against some evil or abuse : *S. B. K. Oil Mills v. Subhash Chandra*, A. I. R. 1961 S. C. 1596.

123. Limitation.

Equitable considerations are out of place while construing a statute providing limitation. A statute of limitation should be given strict and grammatical construction : *Boota Mal v. Union of India*, A.I.R. 1962 S.C. 1716.

124. Sub-sections.

Sub-sections must be construed as an integral part of the enactment. It is not legitimate for the courts to re-write the sub-sections, particularly when no repugnancy exists : *Mafanlal v. Sugar Mills* : A.I.R. 1962 S.C. 1543.

125. General.

Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the act and are to be of the same effect as if contained in the act and are to be judicially noticed for all purposes and directions. The statutory rules cannot be described as or equated with administrative directions : *State of U.P. v. Babu Ram* A.I.R. 1961 S.C. 751 (1961) 2 S.C.R. 679.

The Rules must be in line with the statute; *State of U.P. v. Balu Ram* (Supra).

If the statute under which the bye-laws are made is repealed, those bye-laws are impliedly repealed and they cease to have any validity, unless the repealing statute contains some provision preserving the validity of the bye-law notwithstanding the repeal : *Harish Chandra v. State of Madhya Pradesh* A.I.R. 1965 S.C. 932. The term is used in the sense in which it has been judicially interpreted unless contrary intention is shown. *Vaganehi v. S.F. Dy. Collector*, 1955 S.C. 1017.

The observations made in the judgment of the Supreme Court which are in the nature of Obiter Dicta cannot be relied upon solely for the purpose of showing that certain statutory rules should be held to be valid as a result of the said observations. *Moti Ram v. N.N.E. Frontier Railway*, A.I.R. 1964 S.C. 600.

Extrinsic aid in interpreting rules or statute would be justified only

that an illustration to a section is repugnant to it *Junna Masjid v Kodimandira Deth* A I R 1962 S C 847

118 Repugnancy

Repugnancy arises when two enactments both within the competence of the two legislatures collide and when the constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other than to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provision is not however the only criterion of repugnancy for if a competent legislature with superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field the enactment of the other legislatures whether passed before or after the later would be overborne on the ground of repugnancy. Where such is the position the inconsistency is demonstrated not by a comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation. *State of Orissa v M. T. Tulloch and Co* A I R 1964 S C 1284

119 State how far bound by statute

The executive Government of a State is not bound by a statute unless it appears that it is brought within it by express words or by necessary intendment. This rule is merely of construction which raises an initial presumption in its favour and is not any hard or fast rule. It is a rule intended to give effect to the intentions of the legislature and consequently is therefore either in the purpose of the Act or in its provision a manifestation of a clear intention to the contrary the presumption would be rebutted and the State would be bound. The test for determining whether the State is bound by the provision or not is to see whether it is manifest that from the terms of the statute that it was the intention of the legislature that it shall be bound. In determining the true meaning of the statute regard should be had of the aim object and scope of the statute and it should be read as a whole. *State of Punjab v O. G. B. Syndicate* A I R 1964 S C 669. *V. S. Rice and Oil Mills v State of Andhra Pradesh* A I R 1964 S C 1781. Reference in this connection may also be made to *Director of Rationing v Corporation of Calcutta* A I R 1960 S C 1335 in which it was held that state is not bound by a statute unless it is so provided in express terms or by necessary implication. So the question boils down to this that the intention of the legislature has to be seen. The judgment given by the Privy Council in *Province of Bombay v Municipal Corporation of the City of Bombay* 73 Ind App 271 has been approved by the Supreme Court.

120 Severability

The doctrine of severability means that when some particular provision of a statute offends against a constitutional limitation but that provision is severable from the rest of the statute only the offending provision will be declared void by the court and not the whole of the statute. *Ganga Parthap Singh v Allahabad Bank* 1953 S C R 1150. *State of Bombay v United Motors* 1953 S C R 1069. *Bengal Immunity Co. v State of Bihar*, (1955) 2 S C R. 633. *Jas Lal v Delhi Administration* A I R 1962 S C 1781.

121 Rule of beneficial construction

In constructing the provision of a welfare legislation courts should adopt what is sometimes called a beneficial rule of construction. A construction

stration, A. I. R. 1965 S. C. 871.

129. Accusation.

An allegation of fraud as contemplated by sections 538, 539 and 541 of the Companies Act, 1956 does not amount to accusation within Article 20 (3) of the Constitution. The object of the section is not to consider any accusation as an offence : *Popular Bank (In liquidation) v. Madhava Naik* 1965 S. C. 654.

130. 'Accrue and earned'

The words 'accrue and earned' as used in section 4 (1) (b) (i) of the Income Tax Act, 1923 are used in contradistinction to the word 'received'. The words 'accrue and earned' in section 4 (1) (b) (i) are used in contradistinction to the word 'receive' and indicate a right to receive. They represent a stage anterior to the point of time when the income becomes receivable and connote a character of the income which is more or less inchoate. An income, therefore, accrues when the assessee acquires a right to receive the same : *E. D. Sassoon and Co. Ltd. v. Commissioner of Income Tax Bombay City*, A. I. R. 1954 S. C. 470.

131. Acquire.

The word 'acquire' as used in the Bombay Land Requisition Act, 1958 may include the power to purchase by agreement but is wide enough to enable the Corporation to request the State Government to acquire property under the Land Acquisition Act (1 of 1894) in order to provide living accommodation for its employees : *State of Bombay v. R. N. Navji* A. I. R. 1956 S. C. 294.

132. Acquittal.

The word 'acquittal' does not mean that the trial must have ended in a complete acquittal, but would also include the case where an accused has been acquitted of the charge of murder and has been convicted of a lesser offence. In that view of the matter the appellant was entitled to a certificate under Article 134 (1) (a) as a matter of right and the appeal was treated, as if it was under that provision of the Constitution : *Tarachand v. State of Maharashtra* A. I. R. 232 C.S. 1961.

133. Affairs of State.

Where the legislature has refrained from defining the expression "affairs of State" it would be inexpedient for judicial decisions to attempt to put the said expression into a straight jacket of a definition judicially evolved. The question as to whether any particular document or a class of documents answers the description must be determined in each case on the relevant fact and circumstances adduced before the Court. It was argued that 'Affairs of State' are synonymous with public business and it was contended that section 123 provides for a general prohibition against the production of any document relating to public business unless permission for its production is given by the head of the department concerned. It was argued that documents in regard to affairs of State constitute a class under which there are two species of documents, one the disclosure of which will cause no injury to public interest, and the other the disclosure of which may cause injury to public interest. In the light of the consequence which may flow from their disclosure the two species of documents can be described as innocuous and noxious respectively. It was said that the effect of Section 123 is that there is a general prohibition against the production of all documents relating to public business subject to the excep-

within well recognised limits. The primary effect of the statutory provision must be judged on a fair and reasonable construction of the words used in the rules or statute. *State of Punjab v S S Sodhi* AIR 1961 SC 493

126 Rule made under a statute need not be in conformity with the General law

The statute law must be in conformity with the general law of the land. But a bye-law or rule made under the rule-making power conferred by a statute stands on a different footing because such rules are part and parcel of the statute and their validity cannot be challenged on the ground that they are not consistent with the general law. *T B Ibrahim v R, Regional Transport Authority* 1953 SC R 290, AIR 1953 SC 79

In the construction of rules and statutes it is at all times and in all circumstances permissible to have regard to the state of things existing at the time the statute was passed and to the evils which it was designed to remedy. It is no doubt true that the meaning should be ascertained only from the words employed in the provisions of the act but the set up and the context are also relevant for ascertaining what exactly was meant to be conveyed by the terminology employed. If the words are capable of one meaning alone then it must be adopted but if they are susceptible of wider import then regard must be had to what the legislature had in mind. Though the definition may be more or less the same in two different statutes, still the objects to be achieved not only as set out in the preamble but also as gathered from the antecedent history of the legislation may be widely different. The same words may mean one thing in one context and another in a different context. This is the reason why decision on the meaning of a particular word found in other statutes are scarcely of much value when we have to deal with a specific statute of our own. They may be helpful but cannot be taken as guide or precedents. *D N Banerji v P R Mukherjee*, 1953 SC R 302, AIR 1953 SC 58

Public orders publicly made in exercise of statutory authority cannot be construed in the light of explanations subsequently given by officers making the order as to what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. *Commissioner of police v Gordhandas* 1952 SC R 135, AIR 1952 SC 16

127 Rules cannot save the Act

As rules are made by a subordinate authority which is not the legislature the validity of an act cannot be made to depend upon what the subordinate authority chooses to do or not to do. The rules are not passed by the legislature and in theory the particular shape they took was not even in contemplation. If the act is void the rules cannot make it valid though the converse may not be true. *State of Bombay v United Motors*, 1953 SC R 1069, AIR 1953 SC 252

128 Abandoned

The meaning of the word abandoned would depend upon the context in which it has been used in a particular statute. So far as section 41 (a) of Delhi Municipal Corporation Act 1967 is concerned it means left loose in the sense of being left unattended and not left ownerless. The word accruing in the section has been used with reference to cattle which are left unattended by their owners. *Kanwar Singh and others v The Delhi Admini*

337. The word 'aid' so used cannot be said to cover the word 'grant' as used in article 337. In *re. The Kerala Education Bill 1958* S. C. 956.

137. Allotment.

The word 'allotment' as used in section 75 (i) of the Companies Act 1956 does not include reissuing of forfeited shares. Allotment means appropriation out of the previously unappropriated capital of a company of certain number of shares to a person. Till such allotment the shares do not exist as such. It is on allotment in this sense that the shares come into existence. It would be impossible to give to the word 'allotment' in section 75 (i) a different meaning: *Sri Gopal Jalan and Co. v. Calcutta Stock Exchange Association Ltd.*, A. I. R. 1964 S. C. 250.

138. Amend.

The power to amend constitution conferred by article 368 is enough to include power to take away fundamental rights. This was the opinion expressed by majority view in the case of *Sajjan Singh v. State of Rajasthan* A. I. R. 1965 S. C. 849 and in the case of *Shankri Prasad Singh v. Union of India* A. I. R. 1951 S. C. 458. But this question again came up for consideration before the full court in *Gorakhnath* case in which the majority view was that constitution cannot be amended in a manner which would modify or abridge the fundamental rights.

139. Any one.

The first contention is based on an assumption that the word "any one" in section 76 means only "one of the directors, and only one of the shareholders". This question as regards the interpretation of the word "any one" in section 76 was raised in Cr. Appeals Nos. 93 to 106/59: *Chief Inspector of Mines, etc. v. Karam Chand Thapar*, A. I. R. 1961 S. C. 838 and it has been decided there that the word "any one" should be interpreted there as "every one". Thus under section 76 every one of the shareholders of a private company owning the mine, and every one of the directors of a public company owning the mine is liable to prosecution. No question of violation of Art. 14 therefore arises: *Banwarilal v. State of Bihar* A. I. R. 1961 S. C. 849.

140. Any one of the directors.

The words anyone of the directors as used in section 76 of the Mines Act, 1952 mean every one of the directors. The question was if there was some violation of rules and regulations should all the directors or only one of them be held responsible for it. The court came to the conclusion that all the directors are to be held liable: *Chief Inspector of Mines v. K. C. Thapar* A. I. R. 1961 S. C. 838. To the same effect run the observations made by the Supreme Court in *Banwari Lal v. State*, A. I. R. 1961 S. C. 849.

141. Any other mode of transfer.

The use of the present tense "leaves" or "has left" in the definition of evacuee and "has" in the definition of evacuee property is relied upon in support of the contention that the object of the legislature in enacting these provisions was to confine their operation to a living person only. This line of argument may not per se be of any compelling force but it receives support from the rest of the provisions of the Act to which reference will be made hereafter. It may, however, be pointed out here that cl. (f) (1) will not apply to the case of the petitioners for they do not claim the property

tion that the head of the department can give permission for production of such documents as are innocuous and not noxious, and that it is not possible to imagine that the section contemplates that the head of the department would give permission to produce a noxious document. If under Section 123 a dispute arises as to whether the evidence in question is derived from unpublished official records that can be easily resolved but what presents considerable difficulty is a dispute as to whether the evidence in question relates to any affairs of State. What are the affairs of State under Section 123? In the later half of the Nineteenth Century affairs of State may have a comparatively narrow content. Having regard to the notion about governmental functions and duties which then prevailed 'affairs of State' would have meant matters of political or administrative character relating for instance to national defence, public peace and security and good neighbourly relations. Thus if the contents of the documents were such that their disclosure would affect either the national defence or public security or good neighbourly relations they could claim the character of a document relating to affairs of State. There may be another class of documents which could claim the said privilege not by reason of their contents as such but by reason of fact that, if the said documents were disclosed they would materially affect the freedom and candour of expression of opinion in the determination and execution of public policies. In this class may legitimately be included notes and minutes made by the respective officers on the relevant files, opinions expressed or reports made and gist of official decisions reached in the course of the determination of the said question of policy. In the efficient administration of public affairs Government may reasonably treat such a class of documents as confidential and urge that its disclosure should be prevented on the ground of possible injury to public interest. In other words, if the proper functioning of the public service would be impaired by the disclosures of any document or class of documents such document or such class of documents may also claim the status of documents relating to public affairs. *State of Punjab v. S. S. Singh* A I R 1961 S C. 493

134. Agricultural operation

The phrase 'agricultural operation' has its roots in the word 'agriculture' and therefore, one has to look at the word 'agriculture' for understanding the meaning of 'agricultural operation' and in that sense it means cultivation of the field and tilling the land, sowing of the seeds, planting and similar operation on the land. The Supreme Court was called upon to interpret these words under section 21 of the Income Tax Act, 1922. *Income Tax Commissioner v. Venoy Kumar*, A I R 1957 S C. 768.

135. Agricultural purpose

'Agricultural purpose' would include all those purposes which are associated with agriculture and it cannot be confined merely to the production of grain and food products for human beings and beast and must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber, sal and plyasal trees casuarina plantations, tendu leaves, horranuts etc. *IT Commissioner v. Benoy Kumar*, A I R. 1957 S C 768.

136. Aid

The word 'aid' as used in articles 29 and 30 of the Constitution of India is used in a different sense from that of the word 'grant' as used in article

from the evacuee after 14.3.1947, by any mode of transfer but by right of succession under the Mohammedan law. Succession to property implies devolution by operation of law and cannot appropriately be described as a mode of transfer *Ebrahim Aboobaker v. Tek Chand*, A. I. R. 1953 S. C. 298.

142. Appointed

The word appointed does not necessarily mean already appointed it may mean to be appointed at any future time. The word appointed is inappropriate to signify the Constitution of any authority but is quite proper to signify the election of personnel of the already constituted authority to exercise the appellate power of that authority. *Assam State v. Sristikar* A. I. R. 1957 S. C. 414

143. Area

The word area as used in Motor Vehicles Act, 1939 section 68 (c) denotes such area in the state as the corporation should consider proper and not as areas within a circumscribed part of the State determined by an outside authority *C. S. Bourjee v State of Andhra Pradesh* A. I. R. 1964 S. C. 962.

144. As it may Judge

The words as it may judge occurring in Bengal Court of Ward Act, 1879 mean as it may judge most for the benefit of the property and the advantage of the Ward, *K. D. Co. v. K. N. Singh* A. I. R. 1956 S. C. 440

145. Assignment

The section talks of 'assignment of his office' by a director. The word 'his' would indicate that the office contemplated was one held by the director at the time of assignment. An appointment to an office can be made only if the office is vacant. It is legitimate, therefore, to infer that by using the word 'his' the Legislature indicated that an appointment by a director to the office which he previously held but did not hold at the date of appointment, was not to be included within the word "assignment". Again, there can be no doubt that the section was intended to render void a transfer of his office by a director for if the section had intended only to avoid an appointment by a director of his successor, it would have clearly said so and would not have used the word "assignment". Therefore, even if it is possible for the word "assignment" to have the meaning of "appointment" then it would have to be given both the meanings of "transfer" and "appointment" in the section. This is what the High Court did. That would produce a curious result. Transfer and appointment are clearly entirely different things. Even apart from considerations arising from the law of conveyance, which the High Court was unable to entertain in connection with the transfer of an office a transfer from its very nature inevitably imports the passing of a thing from one to another, a transfer without the passing of the thing transferred, even when that thing is an office, cannot be conceived. An "appointment", on the other hand, has nothing to do with anything passing from one to another, it connotes the putting in of someone in a vacancy. The acts constituting a transfer and an appointment are therefore wholly dissimilar. It would be an unusual statute which by the use of a single word intended to prohibit at the same time, two wholly different acts. We do not think that a construction leading to such a result is permissible: *O. M. P. Works (P) Ltd v. B. K. Thakoor*, A. I. R. 1961 S. C. 573

153 Cargo

Explaining meaning of the word cargo it was observed in this case :—

The last of the points urged by learned Counsel for the respondent was as regards the construction of the new second proviso which had been introduced by the notification of the Reserve Bank dated November 8, 1942. The argument was that the gold that the respondent carried was his personal luggage and not 'cargo' either 'bottom cargo' or 'transport cargo' and that, therefore, could not and need not have been entered in the manifest of the aircraft and hence the second proviso could not be attracted to the case. The entire submission on this part of the case was rested on the meaning of the word 'cargo' the point sought to be made being that what a passenger carried with himself or on his person could not be 'cargo' and that cargo was that which was handed over to the carrier for carriage. Reliance was, in this connection, placed on the definition of the term 'cargo' in dictionaries where it is said to mean 'the merchandise or wares contained or conveyed in a ship'. We find ourselves unable to accept this argument. To say that the second Proviso refers only to what is handed over to the ship or aircraft for carriage would make the provision practically futile and unmeaning. If all the goods or articles retained by a passenger in his own custody or carried by him on his person were outside the second proviso, and the provision were attracted only to cases where the article was handed over to the custody of the carrier it would have no value at all as a condition of exemption. The goods entrusted to a carrier would be entered in the manifest and if they are not it must be owing to the fault of the carrier, and it could hardly be that the passenger was being penalised for the default of the carrier. If the carriage of the goods on the person or in the custody of the passenger were exempted, there would be no scope at all for the operation of the second proviso. We, therefore, consider that the proper construction of the term 'cargo' when it occurs in the notification of the Reserve Bank is that it is used as contradistinguished from personal luggage in the law relating to the carriage of goods. The latter has been defined as whatever a passenger takes with him for his personal use or convenience, either with reference to his immediate necessities or for his personal needs at the end of his journey. Obviously, the gold of the quantity and in the form in which it was carried by the respondent would certainly not be personal luggage in the sense in which 'luggage' is understood as explained earlier. It was really a case of merchandise not for the use of the passenger either during the journey or thereafter and, therefore, could not be called personal luggage or baggage. It was, therefore, 'cargo' which had to be manifested and its value must have been inserted in the air consignment note. In this connection, reference may usefully be made to certain of the International Air Traffic Associations' General Conditions of carriage not as directly governing the contract between the respondent and the aircraft but as elucidating the general practice of transport by air in the light of which the second proviso has to be understood. Part A entitled 'Carriage of Passengers and Baggage' by its Article 8, para 1 (c) excludes goods which are merchandise from the obligation of carriers to transport as luggage or as baggage while Article 3 of Part B dealing with carriage of goods provides that gold is accepted for carriage only if securely packed and its value inserted in the consignment note under the heading 'Quantity and Nature of goods'.

Some point was made of the fact that if the second proviso were applied to the case of gold or articles made of gold carried on the person a

to gather what induced the High Court to grant this leave or what points of outstanding importance that require to be settled are, in the opinion of the High Court, involved. The learned Judges have not certified that this is a fit case for appeal.

"Had some reasons been given and the point or points that it was felt we ought to settle been indicated that might have been treated as a curable irregularity in its procedure; Be as it is, we can only regard this omission as indicative of the fact that the High Court did not realise the responsibility that is cast upon it by Article 134(t) (c) and did not realise that its discretion has to be "judicially" and not mechanically exercised.

Accordingly, following our previous decision, we are unable to regard this appeal as properly certified and so decline to accept it as an appeal under sub-article (c).

In fairness to the learned Judges we have been at pains to see whether there are matters which would have afforded them justification for granting a certificate under sub-article (c). Four grounds were put forward before us on behalf of the appellants three of which are pure grounds of fact. Now it is clear that a certificate cannot be granted under sub-article (c) if the High Court is in doubt about the facts. If there is doubt in the minds of the learned Judges about the facts, their duty is to acquit. They cannot convict and then issue a certificate because they cannot make up their minds about the facts". *Baladin v. State of U. P.* 1956 A. I. R. S. C. 181

157. Charge.

Rule 3.26 (d) of Punjab Civil Services is of general application and therefore the expression 'charge of misconduct' in this rule is not to be interpreted narrowly as meaning 'the charges formally framed and communicated to the Government servant concerned' with the intimation that a formal departmental enquiry had been initiated against him on 'those charges'. The contention does not find any support, as urged, from the last portion of this rule which reads 'until the enquiry into the charge is concluded and a final order is passed thereon. Of course, the enquiry would be into the charges of misconduct on account of which the Government servant has been suspended and the suspension will continue till a final order is passed on those charges.' The requirements of the last portion of this rule do not in any way lead to the conclusion that the enquiry into the charges refers to a formal departmental enquiry into the charges framed and communicated to the Government servant in accordance with R. 7 of the Punishment and Appeal Rules. Whenever any charge of misconduct is under enquiry by the Government; be it informally, the Government is competent to suspend the Government servant and if the requirements of the case require to take action under R. 3.26 (d). *Partap Singh v. State*, A.I.R 1964 S.C. 72.

158. Charity W. B. Estates Acquisition Act, 1953.

The definition of "charitable purposes" in the Charity W. B. Estates Acquisition Act, 1953 follows, though not quite, the well-known definition of charity given by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v. Pemsel*, 1891 AC 513 at p. 583, where four principal divisions were said to be comprised—trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any of the preceding heads. The definition in this Act makes one significant change when it speaks of "public utility" and this

Commissioner of Income tax v Currimbhoy Ebrahim and Sons 1935-3 ITR 39, (AIR 1936 PC 1) (C) it was observed by the Privy Council that business connection in S 42 (1) is different from business as defined in S 4 (2) of the Act. The phrase 'business connection' observed Sir George Rankin is different from 'through not unrelated to the word business of which there is a definition in the Act'. And in *Anglo-French Textile Co. Ltd v Commissioner of Income tax Madras* 1953 SCR 454 AIR 1953 SC 105 this Court has observed that when there is a continuity of business relationship between the person in British India who helps to make the profits and the person outside British India who receives or realises his profits such relationship does constitute a business connection. Vide also the observations in *Bangalore Woollen, Cotton and Silk Mills Co. Ltd v Commissioner of Income tax Madras* 1951 SCR 423, at pp 433-434 AIR 1951 Mad 361 at p. 361. The words 'where a person not resident in the taxable territories carries on business with a person resident in S 42 (2) must be similarly interpreted, and a non resident should be held to carry on business with a resident if the dealings between them form concerted and organised activities of a business character. We are accordingly of opinion that on the facts found the non resident Companies must be held to have carried on business with the appellant as provided in S 42 (2).

Maagaon Dock Ltd v I T & F P T Commr 1958 AIR SC 231 155 Carrying on business C P C s 20

The expression 'voluntarily renders or personally works for gain' cannot be appropriately applied to the case of the Government. The Government can however carry on business. The mere fact that the expression, 'carries on business' is used along with the other expressions does not mean that it would apply only to such persons to whom the other two expressions regarding residence or of personally working for gain would apply. *Union of India v Ladulal Jain* AIR 1963 SC 1681

156 Certifies

Article 174(1)(a) and (b) lay down two conditions which confer a right of appeal to this Court. That in itself indicates that normally there is no right of appeal in any other type of case. The only exception is (c) where a right is conferred 'an appeal is shall lie if the High Court certifies that the case is a fit one for appeal'. Now the word 'certifies' is a strong word.

It indicates that the High Court must bring its mind to bear on the question and as in all cases of judicial orders and certificates the reasons for the order must be apparent on the face of the order itself. The Supreme Court must be in a position to know first that the High Court has applied its mind to the matter and not acted mechanically and secondly, exactly what the High Court's difficulty is and exactly what question of outstanding difficulty or importance the High Court feels this Court ought to settle.

It is not enough to say 'leave to appeal is given' and no more because an appeal is not allowed in the ordinary way when conditions (a) and (b) are not satisfied. Accordingly merely to say that leave is given and no more is tantamount to saying that the High Court will usurp the functions of the Constitution makers and allow the whole case to be opened up despite the fact that the Constitution has specifically limited the normal right of appeal to sub articles (a) and (b) and has left (c) to meet extraordinary cases.

Now in the present case, where the High Court has merely said 'Leave to appeal to the Supreme Court is granted'. It is impossible for us

gives a guidance to the whole meaning and purpose of the exemption. No doubt the definition is not an exhaustive one like the definition of 'religious purposes'. It only speaks of what may be included in it besides the natural meaning of the words. It is quite clear that the provision for the family of the wakif or for himself cannot be regarded as 'relief of poor', 'medical relief' or the 'advancement of education'. It cannot also be regarded as an expenditure on an object of general public utility. The definition as it stands cannot obviously comprehend such dispositions.

The word "charity" in common parlance is a word denoting, a giving to some one in necessitous circumstances and in law a giving for public good. A private gift to one's own self or kith and kin may be meritorious and pious but is not a charity in the legal sense and the Courts in India have never regarded such gifts as for religious or charitable purposes even under the Mahomedan Law. *Fazlul Rabbi v. State of W. B.*, A I R, 1966 S.C. 1722.

159. Circumstances and property.

A tax on 'circumstances and property' (as used in section 14 (1) (f) of U.P. Town Areas Act, 1914) is a composite tax and the word 'circumstance' means a man's financial position, his status as a whole depending, among other things, on his income from trade or business.

Ram Narain v. The State of U.P. A I R 1957 S.C. 18

160 Collusion

One of the simplest definitions of collusion was given by Mr. Justice Bucknill in *Scott v. Scott*, 1913 P. 52. "Collusion may be defined," said the learned Judge "as an improper act done or an improper refraining from doing an act, for a dishonest purpose." Substantially the same idea is expressed in the definition given by Wharton's Law Lexicon, 14th Edition, p. 212, viz., "Collusion in judicial proceedings is a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of a judicial tribunal for some sinister purpose." This definition of collusion was approved by The Supreme Court in *Nagulal Aminal v. B. Sharma Rao*, 1956 S.C.R. 451 A I R 1956 SC 593.

Thus the mere fact that the defendant agrees with the plaintiff that if a suit is brought he would not defend it, would not necessarily prove collusion. It is only if this agreement is done improperly in the sense that a dishonest purpose is intended to be achieved that they can be said to have colluded. *Rupchand v. Raghunanshi (Pit.) Ltd.* A I R 1964 S.C. 1889.

161 Concerned and deal

A person to be dealer must be engaged in the business of buying or selling or supplying goods. The expression "business" though extensively used is a word of indefinite import in taxing statutes it is used in the sense of an occupation or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying, selling and supplying the same commodity. Mere buying for personal consumption i.e., without a profit motive will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as

substituting "by" for "under", thus, making the crucial words "constituted by" instead of "constituted under". In our opinion, the learned Chief Justice fell into the error of re-constructing the provisions of the statute, instead of construing them. The word "by" could be substituted for the word "under" in Section 26A only if the words, as they stand in the section were not capable of making sense, and it would, thus, have been necessary to amend the wording of the section. Turning his attention from the wording of the section to that of the Rules and the Form appearing under the Rules, he again came to the conclusion that "some of the paragraphs of the Form appear to be ill-adjusted to the provisions of the Act". Referring to other parts of the Rules, he was constrained to observe that they "would lend strong support to the view that what is meant by 'any firm constituted under an instrument of partnership' in Section 26 A is no more than a firm of which the constitution appears from an instrument in writing. It is obvious that if such be the meaning of the expression 'constituted under an instrument of partnership', the instrument need not be one by which the partnership was created". But then he attempted to get over that difficulty by observing that the language of the Rules and the Form could not supersede a provision contained in the Act itself. He further opined that the language in para. 4(1) is "undoubtedly unsatisfactory. In our opinion, any attempt to reconstruct the provisions of the relevant section and the Rules, on the assumption that the intention of the legislature was to limit the registration of firms to only those which have been created by an instrument of partnership's, with all respect, erroneous. The proper way to construe the provisions of the statute is to give full effect to all the words of the relevant provisions, to try to read them harmoniously, and then to give them a sensible meaning. Hence, we have to consider, at the threshold, the question whether the words "constituted under an Instrument of Partnership" have some meaning which can be attributed to them harmoniously with the rest of the relevant provisions. A partnership may be created or set up by a contract in writing, setting out all the terms and conditions of the partnership, but there may be many cases, and perhaps, such cases are more numerous than the other class, where a partnership has been brought into existence by an oral agreement between the parties on certain terms and conditions which may subsequently be reduced to writing which will answer the description of an instrument of Partnership. Such an instrument would, naturally, record all the terms and conditions of the contract between the parties which at the initial stages had not been reduced to writing. In such a case, though the partnership had been brought into existence by an oral agreement amongst the partners, if the terms and conditions of the partnership have been reduced to the form of a document, it would be right to say that the partnership has been constituted under that instrument. The word "constituted" does not necessarily mean "created" or "set up", though it may mean that also. It also includes the idea of clothing the agreement in a legal form. In the Oxford English Dictionary, Vol. II, at pp. 875 and 876, the word "constitute" is said to mean, *inter alia*, "to set up, establish, found (an institution, etc.)" and also "to give legal or official form or shape to (an assembly, etc.)". Thus, the word in its wider significance, would include both, the idea of creating or establishing, and the idea of giving a legal form to, a partnership. The Bench of the Calcutta High Court in the case of 1955-28 I.T.R. 698 : A.I.R. 1956 Cal. 303 (*supra*) under examination now, was not, therefore, right in restricting the word "constitute" to mean only "to create", when clearly it could also

to set aside the service of the writ of summons for irregularity, on the ground that the defendant being an attorney, he was only described as of Paper Buildings in the Inner Temple, London and the addition of "gentleman" was not given. It was held that the form in the statute 2 Will 4, c 39 Section I did not require the addition of the defendant to be inserted in the Writ and it was sufficient to state his residence. The writ of summons was therefore valid. In another case in the same volume *Cook v Vaughan*, (1838) 150 E.R. 1346 it was held that where a writ of *capias* described the defendant by the addition of "gentleman," but that addition was omitted in the copy served, the copy was not a copy of the writ, in compliance with the stat 2 Will 4, c 39 Section 4. On behalf of the respondents a number of decisions under the Bills of Sale Act, 1878 and the Amendment Act 1882 (45 and 46 Vict c 43) were cited. The question in those cases was whether the bill was "in accordance with the form in the schedule to this Act annexed" as required by Section 9 of the Bills of Sale Act 1878, and Amendment Act 1882. In *re Aewer Ex parte Kahen*, (1882) 21 Ch D 871 it was held that a "true copy" of a bill of sale within the Bills of Sale Act 1878, Section 10, sub-section (2), must not necessarily be an exact copy so long as any errors or omissions in the copy filed are merely clerical and of such a nature that no one would be thereby misled. The same view was expressed in several other decisions and it is unnecessary to refer to them all. Having regard to the provisions of Part VI of the Act we are of the view that the word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is true one is whether any variation from the original is calculated to mislead an ordinary person. Applying that test we have come to the conclusion that the defects complained of with regard to Election Petition No 269 of 1962 were not such as to mislead the appellant, therefore there was no failure to comply with the last part of sub-section (3) of Section 81. In that view of the matter sub-section (3) of Section 90 was not attracted and there was no question of dismissing the election petition under that sub-section by reason of any failure to comply with the provisions of Section 81. This disposes of the second preliminary objection raised before us. *Murarka Radhey Shyam v Roop Singh* 1964 D.E.C 250.

165 Constituted

The word 'Constituted' does not necessarily mean 'created' or 'set up' though it may mean that also. It also includes the idea of clothing the agreement in a legal form.

So far as this term as used in an instrument of partnership is concerned it was observed

"If by the expression 'constituted under an instrument of partnership' is meant a firm which originated in a verbal agreement but with respect to which a formal deed was subsequently executed, there would be no room in the section for partnerships actually created by an instrument and such partnerships, although most obviously entitled to registration, would be excluded from the purview of the section. Even etymologically or textually, I do not think that the word 'constituted', when used in relation to a firm or such other body, can mean anything but 'created' when the reference is to some deed or instrument to which the inspection of the firm or other body is to be traced.

After having, thus held that Section 26A contemplated firms created or brought into existence by a deed in writing, he had no difficulty in

hold that the words "constituted under an instrument of partnership" include not only firms which have been created by an Instrument of Partnership but also those which may have been created by word of mouth but have been subsequently clothed in legal form by reducing the terms and conditions of the partnership to writing: *M/s. R.C. Miller and Sons v. I.T. Comur*, IV. B. 1959. S. C. 868.

166. Consumption.

There is for each commodity what may be considered ordinarily to be the final act of consumption. But this should not make us forget that in reaching the stage at which this final act of consumption takes place the commodity may pass through different stages of production and for such different stages there would exist one or more intermediate acts of consumption. Thus the final act of consumption of cotton may be considered to be the use as wearing apparel of the cloth produced from it. But before cotton has become a wearing apparel, it passes through the hands of different producers each of whom adds some utility to the commodity received by him. There is first the act of ginning then ginned cotton is spun into yarn by the spinner; the spun yarn is woven into cloth by the weaver; the woven cloth is made into wearing apparel by the tailor. At each of these stages distinct utilities are produced and what is produced is at the next stage consumed. It is usual and correct to speak of raw cotton being consumed in ginning, of ginned cotton being consumed in spinning, of spun yarn being consumed in weaving, of woven cloth being consumed in the making of wearing apparel which is ultimately consumed by men, women and children in using it as dress. In the absence of any words to limit the connotation of the word "consumption" to the final act of consumption, it will be proper to think that the Constitution makers used the word to connote any kind of user which is ordinarily spoken of as consumption of the particular commodity: *Anurarkhan Mahboob Co. v. State of Bombay*, A. I. R. 1961 S. C. 213.

167. Contract of Service.

Then there is the question whether the first appellant has, as held by the Tribunal again by a majority, contravened s. 123 (7) of the Act. The facts found are that one Ganga Prasad was engaged by the first appellant to prepare three carbon copies of the Electoral Rolls and was paid Rs. 550 at the rate of Re. 0-8-0 per hundred voters and likewise, one Viswanath Pande was engaged to enter the names of the voters in printed cards and was paid Rs. 275 at Re. 0-4-0 per hundred cards. Both these are undoubtedly expenses incurred in connection with the election and have, in fact, been shown by the first appellant in the return of election expenses against column k. Now the contention of the respondent which has found favour with the Tribunal is that both Ganga Prasad and Vishwanath Pande must be held to have been employed for payment in connection with the election, and as with their addition, the number of persons allowed to be employed under schedule VI has been exceeded, the corrupt practice mentioned in S. 123 (7) of the Act has been committed. It is contended by the Solicitor General that on the facts found Ganga Prasad and Viswanath Pande cannot be said to have been employed by the first appellant, and that the conclusion of the Tribunal to the contrary is based on a misconception of law. Now, whether a person is an employee or not is question of fact, and if there had been any evidence in support of it, this Court would not interfere with the finding in special appeal. But the respondent, on whom the burden lies of establishing contravention of Rs. 118, has adduced no evidence

mean putting a thing in a legal shape. The Bombay High Court, therefore, in the case of 1950 29 ITR 903 A.I.R. 1956 Bom 321 (supra) was right in holding that the section could not be restricted in its application only to a firm which had been created by an instrument of partnership and that it could reasonably and in conformity with commercial practice, be held to apply to a firm which may have come into existence earlier by an oral agreement, but the terms and conditions of the partnership have subsequently been reduced to the form of a document. If we construe the word 'constituted' in the larger sense, as indicated above, the difficulty in which the learned Chief Justice of the Calcutta High Court found himself would be obviated inasmuch as the section would take in cases both of firms coming into existence by virtue of written documents as also those which may have initially come into existence by oral agreements but which had subsequently been constituted under written deeds. The purpose of the provision of the Income Tax Act—Section 26A—is not to compel the firms which had been brought into existence by oral agreements to dissolve themselves and to go through the formality of constituting themselves by Instruments of Partnership. If we construe the words constituted under in that wider sense, we give effect to the intent on of the legislature of compelling a firm which had existed as a result of an oral agreement to enter into a document defining the terms and conditions of the partnership, so as to bind the partners to those terms before they could get the benefit of the provisions of Section 23(5)(a). Section 23(5)(a) confers a privilege upon partners who may find it more worth their while to be assessed upon their individual total income than upon the total income of the partnership. It is, therefore, very important from the point of view of the Revenue that the Department should be apprised in time of the true constitution of the partnership, the names of the true partners and the precise share of each of them in the partnership profits (or loss if any). The very object of this provision will be defeated if the alleged partnership is not genuine or if the true constitution of the partnership and the respective shares of the partners, are not fully and correctly placed on record as soon as possible, for the purpose of assessment. In this connection the provisions of Section 28(2) of the Act are also worth noticing. That sub-section provides that if the Income-Tax Officer or the Appellate Authorities under the Act, are satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the Instrument of Partnership registered under the Act, and governing such distribution and that any partner has concealed any part of his profits, the penalty prescribed thereon may be imposed upon such a partner. Unless the Instrument of Partnership has been registered in respect of the accounting year and before the assessment has been done, the penal provisions aforesaid cannot be enforced. It is therefore essential, in the interest of proper administration and enforcement of the relevant provisions relating to the registration of firms that the firms should strictly comply with the requirements of the law and it is incumbent upon the Income Tax Authorities to insist upon full compliance with the requirements of the law. But in our opinion there is no warrant in the words of relevant provisions of the statute for restricting registration under Section 26A of the Act to those firms only which have been created or brought into existence by an Instrument of Partnership. In our opinion it is more in consonance with the terms of the relevant provisions of the Act, referred to above, to

end. If the employer terminates the service of his employee that again brings the continuity of service to an end. If the service of an employee is brought to an end by the operation of any law that again is another instance where the continuance is disrupted; but it is difficult to hold that, merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service. Similarly, participation in an illegal strike which may incur the punishment of dismissal may not by itself bring to an end the relationship of master and servant. It may be a good cause for the termination of service provided of course the relevant provisions in the standing orders in that behalf are complied with; but mere participation in an illegal strike cannot be said to cause breach in continuity for the purposes of gratuity. On the other hand, if an employee continues to be absent from duty without obtaining leave and in an unauthorised manner for such a long period of time that an inference may reasonably be drawn from such absence that by his absence he has abandoned service, then such long, unauthorised absence may legitimately be held to cause a break in the continuity of service. It would thus always be a question of fact to be decided on the circumstances of each case whether or not a particular employee can claim continuity of service for the requisite period or not. The Supreme court held that long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee: *M/s Jeevan Lal v. Its Workmen* A. I. R. 1961 S.C. 1567.

169. Could

The word could has a different meaning from did. The difference between the two terms is too elementary to be mistaken. Where the allegation was that a certain party could enlist the support of certain workers, it was held that all that could be said was that, that party was in a position to enlist the support and it did not actually do so: *Harish Chandra v. Triloki Singh*, A.I.R. 1957 S.C. 444.

170. Court.

Includes appellate Court: *N. Chettiar v. S. Chettiar*, 1960 S.C.R. 209.

171. Court immediately below.

The words "court immediately below" occurring in Article 133(1) of the Constitution of India cannot be equated with the words "Court subordinate" as used in section 115 of the Civil Procedure Code, 1908. The single judge of the High Court is the Court immediately below when the case is disposed of by a Division bench of High Court: *Lalli Prasad v. Karnal Distillery*, A. I. R. 1963 S. C. 1279.

172. Court or Tribunal.

The scope of an adjudication under the Industrial Disputes Act is much wider than that of an arbitrator making an award. Wide as their powers are, these Tribunals are not absolute, and there are limitations to the ambit of their authority. In *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.*, A I.R. 1959 S.C. 188 at p. 203, the Supreme Court held by a majority that though these Tribunals are not Courts in the strict sense of the term they have to discharge quasi judicial functions and as such are subject to the overriding jurisdiction of this Court, under Art. 136 of the Constitution. Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of

whatsoever, and all that is on record is what the first appellant deposed while he was in the box. He merely stated that Ganga Prasad and Viswanath Pande were asked to do the work on contract basis. That is wholly insufficient to establish that there was a contract of employment of those persons by him. It was argued for the respondent that there could be a contract of employment in respect of piece-work as of time work, and that the evidence of the first appellant was material on which the Tribunal could come to the conclusion to which it did. It may be conceded that a contract of employment may be in respect of either piece-work or time work but it does not follow from the fact that the contract is for piece-work that it must be a contract of employment. There is in law a well-established distinction between a contract for services and a contract of service, and it was thus stated in *Coburn v. Herfordshire County Council*, 1947 K B 598 at p 615 (A):

'In the one case the master can order or require what is to be done while in the other case he can not only order or require what is to be done but how it shall be done.'

This Court had occasion to go into this question somewhat fully in *Dharangadhara Chemical works Ltd v State of Saurashtra*, civil appeal No 83 of 1956 D/23 11 1956 A I R 1957 S C 264 and it was there held that the real test for deciding whether the contract was one of employment was to find out whether the agreement was for the personal labour of the person engaged, and that if was so, the contract was one of employment, whether the work was time-work or piece-work, or whether the employee did the whole of the work himself or whether he obtained the assistance of other person also for the work. Therefore, before, it could be held that Ganga Prasad and Viswanath Pande were employed by the first appellant, it must be shown that the contract with them was that they should personally do the work, with or without the assistance of other persons. But such evidence is totally lacking and the finding therefore that they had been employed by the first appellant must be set aside as based on no evidence. *Harish Chandra v Triloki Singh*, A I R 1957 S C 444

given in the section generally applicable to all classes of assessee. This sub-section has drafted in the widest terms and there is nothing whatsoever in its language to suggest that its operation is confined to non-residents only. Wherever the legislature intended to limit the operation of any part of this section to non-residents alone, it said so in express terms. Sub-section (2) and the later portion of sub-section (1) expressly concern themselves with the case of non-residents, while sub-sections (1) and (3) are so framed that they cover both residents and non-residents.

A Bench of the Bombay High Court in — 'A.I.R. 1946 Bom, 185 held that notwithstanding its amendment in 1934 the section applied only to non-residents. Reliance was placed, *inter alia*, on the circumstance that the marginal note appended to the section indicating that it applied to non-residents alone had not been deleted. To avoid the criticism and to remove doubts the legislature by act 22 of 1947 changed the marginal note also: *I.T. Commr. v. Bhogi Lal Laher Chand*, A.I.R. 1954 S.C. 155.

175. Definite Information

The phrase "definite information" cannot be construed in a universal sense and its meaning must depend on and vary with the circumstances of each case. There is no doubt, however, that the information must be definite that is more than mere guess, gossip or rumour. There must also be a causal connection between the information and the discovery; but "discovery" in the context of the section does not mean a conclusion of certainty at the stage of notice. What is necessary at that stage is that the Income Tax Officer should have formed an honest belief upon materials which reasonably support such belief: *A. N. Lahshman v. I.T. Officer*, A.I.R. 1958 S.C. 795.

176. Demand.

For the meaning of the word see: *Ram Saran v. State*, A.I.R. 1959 S.C. D. 239.

177. Demonstration.

A demonstration is defined in the Concise Oxford Dictionary as an outward exhibition of feeling, as an exhibition of opinion on political or other question especially in a public meeting or procession. In Webster it is defined as a public exhibition by a party, sect or society as by a parade or mass meeting. Broadly it may be stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression because speech need not be vocal since signs made by a dumb person would also be a form of speech. A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Article 19 (1) (a) and 19 (1) (b). It is needless to add that from the very nature of things a demonstration may take various forms, it may be noisy and disorderly for instance stone throwing by a crowd may be cited as an example of violent and disorderly demonstration and this would not obviously be within Article 19 (1) (a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances: *Kameshwar Prasad v. State of Bihar*, A.I.R. 1962 S.C. 1166.

the trappings of a court and deprive them of arbitrary or absolute description and power. Benevolent despotism is foreign to a democratic Constitution. That is the heart of the matter. When the Constitution of India converted this country into a great sovereign democratic republic it did not invest it with the mere trappings of democracy and leave it with merely its outward forms of behaviour but invested it with the real thing, the true kernel of which is the ultimate authority of the Courts to restrain all exercise of absolute and arbitrary power not only by the executive and by officials and lesser tribunals but also by the legislatures and even by Parliament itself. The Constitution established a Rule of Law in this land and that carries with it restraints and restrictions that are foreign to despotic power. *J. K. Iron & Steel Co. v. Mador* (1951) A I R 1956 S C 231

173 Cultivable land

The lands in suit according to the plaint were uncultivable waste lands covered with shrubs, jungle and the like. They had not been cultivated for a long time. Waste lands covered with shrubs, jungle and the like cannot be held to be uncultivable merely on that account or on account of their being not cultivated for a long time. Land which can be brought under cultivation is cultivable land unless some provision of law provides for holding it otherwise in certain circumstances. *Athma nathswami Devasthanam v. K. Gopalaswami* A I R 1966 S C 331

174 Deemed

The term deemed as used in section 4 of the Income Tax Act 1922 brings within the net of chargeability income not actually accruing but which is supposed notionally to have accrued. It involves a number of concepts. By statutory fiction income which can in no sense be said to accrue at all may be considered as so accruing. Similarly the fiction may relate to the place the person or be in respect of the year of taxability. S 42 (1) of the Act defines what income is deemed to accrue within taxable territories. It is only by application of this definition that one class of income deemed to accrue to a resident within taxable territories within the meaning of S 4 (1) (b) can be estimated. The words "In the case of any person residing out of British India" were deleted from S 42 (1) during the pendency of the amendment bill of 1939 in the Council of State presumably with the object of making the section applicable to any person who had any income which in a primary sense arose in British India even though technically it had arisen abroad irrespective of the circumstance whether that person was resident ordinarily resident or not ordinarily resident.

By section 8 of Act XXIII of 1941 cl. (c) was added to S 14 of the Act. No effect was to be given to this amendment before the year ending 31st March 1943. The relevant part of S 14 after this amendment is in these terms:

The tax shall not be payable by an assessee in respect of any income, profits or gains accruing or arising to him within a Part B State unless such income, profits or gains are received or deemed to be received in or are brought into the taxable territories in the previous year by or on behalf of the assessee or are assessable under S 12 B or S 42."

In view of these legislative changes in the provisions of sections 4, 14 and 42 of the Act the conclusion is irresistible that object of recasting S 42(1) in general terms was to make the definition of deemed income

in addition to bringing a session of Parliament to close, prorogation puts an end to all business which is pending consideration before either house of legislature at the time of prorogation. Dissolution of Parliament is invariably preceded by prorogation and what is true about the result of prorogation is, it is said, a *fortiori* true about the result of dissolution. Dissolution of Parliament is sometimes described as "a civil death of Parliament". Ilbert, in his work on 'Parliament', has observed that "prorogation means the end of a session (not of a Parliament)"; and adds that "like dissolution, it kills all bills which have not yet passed". He also describes dissolution as an "end of Parliament (not merely of a session) by royal proclamation", and observes that "it wipes the slate clean of all uncompleted bills or other proceedings". *Purshottam v. State of Kerala*, A.I.R. 1962 S.C. 694.

183. Distinct matter

The expression distinct matter as used in S. 5 of the Stamp Act, 1899 has a different meaning as compared with the term description: *Board of Revenue v. A. P. Benthall*, A. I. R. 1956 S. C. 35.

184. Election.

The word 'election' has by long usage in connection with the process of election of proper representative in democratic institution, acquired both wide and narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. The term 'election' may be taken to embrace the whole procedure whereby an elected member is returned whether or not it is found necessary to take a poll. The word 'election' has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression 'conduct of elections' in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329 (b). That the word 'election' bears this wide meaning whenever we talk of election in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases, dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with, quite concisely in Halsbury's Laws of England in the following passage (see p. 237 of Halsbury's Laws of England, 11th edn. Vol. 12, under the heading "Commencement of the Election"):

"Although the first, formal step in every election is the issue of the writ, the election is considered for some purpose to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent'. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when 'the conduct and management' of an election may be said to begin. Again, the question as to when a particular person

178 Detain.

The word "detains" may denote detention of a person against his or her will, but in the context of the section it is impossible to give this meaning to the said word. If the object of the section had been to protect the wife such a construction would obviously have been appropriate; but, since the object of the section is to protect the rights of the husband, it cannot be any defence to the charge to say that, though the husband has been deprived of his rights, the wife is willing to injure the said rights and so the person who is responsible for her willingness has not detained her. Detention in the context must mean keeping back a wife from the husband or any other person having the care of her on behalf of her husband with the requisite intention. Such keeping back may be by force; but it need not be by force. It can be the result of persuasion, allurement or blandishments which may either have caused the willingness to the woman, or may have encouraged, or co-operated with, her initial inclination to leave her husband. It seems to us that if the willingness of the wife is immaterial and it can not be a defence in cases falling under the first three categories mentioned in S. 498, it cannot be treated as material factor in dealing with the last category of case of detention mentioned in the said section *Alamgir v. State of Bihar*, A.I.R. 1959 S C 436

179. Direction.

For the meaning of the word see *Income Tax Officer v. Bhagwan Dass*, A I R 1966 S C. 342.

180 Discharge

The word discharge as used in S 73 (1) of the Employee's State Insurance Act 1948 must be taken to mean as a discharge which is the result of a decision of the employer embodied in an order passed by him. It may conceivably also include the case of discharge where discharge is provided for by a Standing Order. In such a case, it may be said that the discharge flowing from the Standing Order is, in substance, discharge brought about by the employer with the assistance of the Standing Order. Even so, it cannot cover the case of abandonment of service by the employee which is inferred under Standing Order *Buckingham & Carnatic Co v. Venkatesh*, A.I.R. 1964 S C. 1272

181 Dismissal and removal

Dismissal or removal includes every kind of termination of service. There is no implication any where in the Constitution which may compel the court to reduce the scope of this protection. The dictionary meaning of the word 'dismiss' is to let go, to relieve from duty, to get rid off. In the ordinary parlance, the said words mean nothing less than the termination of a person's office. The effect of dismissal or removal of one from his office is to discharge him from that office. In that sense the said words contemplate every termination of the service *Moti Ram v. State of Andhra Pradesh*, A I R. 1964 S C 600

Order passed by way of Punishment is an order of Dismissal. *S. R. Tewari v. Dist. Board*, 1963 A L J. 644 Compulsory retirement is not included. *Shynlal v. State*, 1954 S. C R. 26 A I R 1954 S C. 369.

182. Dissolution and prorogation

Wherever the English Parliamentary form of Government prevails the words "prorogation and dissolution have acquired the status of the terms of art and their significance and consequences are well settled. In England

191. Exempt.

For the meaning of this word see *M/s Dhadroymel Gobindram v. Shaji Kalidass & Co.*, A.I.R. 1961 S. C. 1285.

192. Existing law.

"Existing law" under Article 366 means, "any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such law, ordinance, order, bye-law, rule or regulation." To have the status of an existing law, the law should have been made by a Legislature having power to make such law: *Jeejeebhoy v. Asst. Collector, Thana* A.I.R. 1965 S.C. 1096.

It is the same thing as law in force: *Edward Mills Co. v. State of Ajmer* (1955) 1 S.C.R. 735: A.I.R. 1955 S.C. 25. Act not put in force is existing law: *Thangal Kunju v. M. Venkatohalan*, (1955) S.C.R. 1196: A.I.R. 1956 S.C. 246. Orders of absolute monarch are existing laws: *Madhaorao v. State of M. P.* (1961) 1 S.C.R. 957; A.I.R. 1951 S.C. 298.

193. Expense.

The word expenditure and expense have almost the same meaning. Expense is money laid out by calculation and intention though in many uses of the word, this element may not be there, as when we speak of a joke at other's expense. The primary meaning of the word is to pay out or pay away money: *Indian Mollasses Co. v. I. T. Commr.*, A. I. R. 1959 S.C. 1049.

194. Export.

The word "export" has reference to taking out of goods which had become part and parcel of the mass of the property of the local area and will not apply to goods in transit i.e. brought into the area for the purpose of being transported out of it. If the intention was to tax such goods then the word used should have been "re-exported" which means to export goods, again. Re-exportation means the exportation of imported goods: *Empress Mills v. Municipal Committee, Wardha*, A. I. R. 1958 S. C. 341.

195. Final decision.

A decision is said to be final when so far as the Court rendering it is concerned, it is unalterable, except by resort to such provisions of the Code of Civil Procedure as permit its reversal, modification or amendment. A final decision may mean a decision which would operate as res judicata between the parties if it is not sought to be modified or reversed by preferring an appeal or revision or a review application as is permitted by the Code: *Venkata Reddy v. Pethi Reddy*, A. I. R. 1963 S. C. 992.

196. Final order

Order of the High Court dismissing an application under Section 21(3) 4 of the Bihar Sales Tax Act, 1944, to direct the Board of Revenue, Bihar to state a case and to refer it to High Court was not a final order. Such an order cannot be regarded as final, because it does not of its own force bind or affect the rights of the parties: *Prem Chand Satramdas v. State of Bihar*, 1950 S.C.R. 799. An order which is an interlocutory order and which does not bind the parties cannot be regarded as final order: *State of U.P. v. Col. Sujjan Singh*, A.I.R. 1964 S.C. 1897.

commences to be a candidate is a question to be considered in each case. See *V P Ponnuswami v Returning Officer* A I R. 1952 S C 64 1952 S C R 218 *Harilal Vishnu Kamath v Ahmad Ishaque* A I R 1955 S C 233

185 Employed in any industry

In the modern world industrial operations have become complex and complicated and for the efficient and successful functioning of any industry several incidental operations are called in aid and it is the totality of all these operations that ultimately constitutes the industry as a whole. Wherever it is shown that the industry has employed an employee to assist one or the other operation incidental to the main industrial operation it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or operation of the industry. An employee who is engaged in any work or operation which is incidentally connected with the main industry of the employer would be a workman provided the other requirements are satisfied. *J K Cotton Spg & Wvg Mills Co v L 4 Tribunal of India* A I R. 1964 S C 737

186 Employment

Whether a person is an employee or not is a question of fact. The employment may be in respect of either piece work or time work. But a contract of service may not be a contract of employment. *Harish Chandra v Triloki Nath* A I R 1954 S C 404

187 Escaped assessment

Meaning explained in *Commissioner I T v M/s N P & Co* AIR 1960 S C 1232

The words escaped assessment apply equally to cases where a notice was received by the assessee but resulted in no assessment at all and to cases where due to any reason no notice was issued to the assessee and, therefore there was no assessment of his income. *Ghanshyam Dass v Regional Asstt Commr Sales Tax* A I R 1964 S C 766

The word assessment as used in section 20 of the Bombay Sales Tax Act, 1946 does not include a mere filing of return and payment by a registered dealer. The word assessment has a reference to assessment made under S 11 and 11 A of the Act. *State of Bombay (Gujarat) v Jagmohan Dass* A I R 1966 S C 1412

188 Especially

The word especially as used in section 106 of the Evidence Act 1872 means facts which are pre-eminently or exceptionally within the knowledge of the person concerned. *Shambu Nath Mehra v State of Ajmer* A I R 1956 S C 404

189 Eviction

The word eviction as used in Bombay Land Revenue Code (5 of 1879) does not mean physical removal of the occupant from the land in dispute. *State of Bombay v Fakir Umar* A I R, 1961 S C 722

190 Except where Government otherwise directs

For the meaning of these words see *State of Maharashtra v M S Association*, A I R. 1966 S C 623

203. In any Case.

The words "in any case" as used in Section 62 of Motor Vehicles Act 1939 do not mean that under no circumstances a temporary permit can be granted on any route for more than a period of 4 months. These words do not mean in any circumstances: *Madhya Bharat State Road Transport Corporation, Bauragarh v. Regional Transport Authority*, A. I. R. 1966 S. C. 156.

204. In any reference.

The word "in any reference" as used in Section 31 (4) of the Arbitration Act mean in the matter of a reference. The word reference having been defined in the Act as reference to arbitration. The words in any reference, are comprehensive enough to cover an application first made after the arbitration is completed: *Kumbha Marji v. Dominion of India*, A. I. R. 1953 S. C. 313.

205. Import.

Import is not merely the bringing into but comprises something more i.e. incorporating and mixing up the goods imported with the mass of the property in the local area. This word is derived from the Latin word *importare* which means to carry out but these words are not to be interpreted only according to their literal derivations. Lexico-Logically they do not have any reference to goods in transit. This word may mean to bring in from a foreign or external source; to introduce from without especially to bring (Wares or merchandise) into a place or country in the transactions of commerce opposed to export *Empress Mills v. Municipal Committee Wardka*, A. I. R. 1958 S. C. 341. Does not include possession or sale: *State of Bombay v. F. N. Balsara*, 1951 S. C. R. 682, A. I. R. 1957 S. C. 318.

206. Import In and Export out.

The words "imported into or exported from" were commented upon by the Supreme Court in *Empress Mills v. Municipal Committee, Wardka*, A. I. R. 1958 S. C. 341. The word export has reference to taking out the goods which had become part and parcel of the mass of the property of the local area and will not apply to goods in transit. The word import which is derived from the latin word *importare* means to bring in: *Empress Mills (Supra)*. See also *State of Transcare Cockin v. S. C. V. Factory*, A. I. R. 1953 S. C. 333.

207. Impose.

The word "impose" as used in the Bombay District Municipal Act of 1901 means the Actual levy of the Tax after authority to levy it has been acquired by rules duly made and sanctioned. This word does not mean acquisition of the power to tax by following the procedure laid down in Section 60 to 62 of the Act: *Municipality of Anand v. State of Bombay*, A. I. R. 1962 S. C. 988.

208. Incidental disputes.

For the meaning of this term see *Abdul Satar v. State of Bombay* 1963, S.C.D. 310.

209. Industrial Dispute.

The dispute as to whether how many persons should work a machine is an industrial matter and an industrial dispute: *Model Mills v. Dharam Dass*, A. I. R. 1958 S. C. 311. An individual dispute cannot be converted into industrial dispute: *Newspapers Ltd. v. State Industrial Tribunal*,

Order of remand is not a final order *M/s Jethanand & Sons v State of U P.* (1961) 3 S C R 704 A I R 1961 S C 791

197 Finding

A finding is nothing but what one finds or decides

A finding can be only that which is necessary for the disposal of an appeal A finding is a decision which is necessary for giving relief in a certain case *Income tax Commr v M/s Bhagwan Dass*, A I R 1965 S C 342

198 For the year in question

The words for the year in question as used in Section 10 (2)(x) of the Income Tax Act 1922 does not mean the year in which the allowance is claimed but mean the year in respect of which the bonus is paid *Commissioner of Income Tax v M/s Swadeshi Cotton and Flour Mills*, A I R 1964 S C 1766

199 Forth with

The word 'forthwith' means without unreasonable delay The difference between undertaking to do something forthwith and within a specified time is familiar to every one conversant with law To do a thing forthwith is to do it as soon as reasonably convenient *K N Joglekar v Commr of Police* A I R 1957 S C 28

200 Full Time

In an industrial community, term 'full time' has acquired definite significance recognized by popular usage The term refers to customary period of work and all these terms assume that a certain number of hours per day or days per week constitute respectively a day's or week's work within a given industry or factory *Sankar Balaji v State of Maharashtra*, A I R 1962 S C 517

Manufacture includes any process incidental or ancillary to the completion of a manufactured product Processing cannot be equated with manufacture *Union of India v D C M.* A I R 1963 S C 791

201 Good will

The good-will of a business depends upon a variety of circumstances or a combination of them The location the service standing of the business, the honesty of those who run it and the lack of competition and many other factors go individually or together to make up the good will, though locality always plays a considerable part Shift the locality and the good will may be lost At the same time, locality is not every thing The power to attract custom depends on one or more of the other factors as well In the case of a theatre or restaurant what is catered how the service is run and what the competition is contribute to the good will *M/s Cambatha and Co v E P T Commr*, A I R 1961 S C 1010

202 Goods and Manufacture

The term 'goods' has been defined in Webster as 'Goods noun, plural, (1) movables household furniture (2) personal or movable estate, as horses, cattle, utensils, etc (3) wares merchandise, commodities bought and sold by merchants and traders

This definition makes it clear that to become goods' an article must be something which can ordinarily come to the market to be bought and sold

Indian Tobacco Co. v. State of Andhra Pradesh, A. I. R. 1962 S. C. 1733.

The words in the course of etymologically denotes movement from one point to another. The expression in the course of implies a period of time during which the movement is in progress. A sale in the course of export out of the country should be understood as meaning a sale taking place not only during the activities directed to the end of exportation of the goods out of the country but also as a part of or connected with the such activities. The word course conveys the idea of a gradual and continuous flow an advance, a journey, a passage, from one place to another: *State of Travancore Cochin v. S. V. C. Factory*, A. I. R. 1953 S. C. 333.

217. In the interest of public

The words in the interest of public as used in section 2 and 3 of the Punjab Special Powers Press Act, 1956 are of great amplitude and are of much wider connotation than the words for the maintenance of. The expression in the interest of makes the ambit of the protection very wide for a law may not have been designed to directly maintain public order or to directly protect the general public against any particular evil and yet it may have been brought on a statute book in the interests of public order: *Virendra v. State of Punjab*, A.I.R. 1957 S.C. 896.

S. 295A I.P.C. which provides punishment for insulting religious beliefs is in the interest of public order: *Ramji Lal Modi v. State of U.P.*, A.I.R. 1957 S.C. 620.

218. In the way of his business as agent.

The expression in the way of his business as agent as occurring in Section 409 of the Indian Penal Code means that the property is entrusted to the Agent in the ordinary course of his duty or habitual occupation or profession or trade. The Agent should get the entrustment or dominion over the property in his capacity as agent. If a person is entrusted with the property in the course of his duties as an agent the requirements of the section 409 of the Indian Penal Code would be fulfilled. A person may be an Agent of another for some purpose and if he is entrusted with the property not in connection with that purpose but for another purpose that entrustment will not be entrustment for the purposes of Section 409 if any breach of trust is committed by that person. Entrustment of property in the capacity of an Agent will not by itself be sufficient to make the criminal breach of trust by the Agent a graver offence than any of the offences mentioned in section 406 to 408: *R. K. Dalmia v. Delhi Administration*, A. I. R. 1962 S. C. 1821.

219. Judgment.

The word judgment as employed in reference to section 66(5) of the Income Tax Act, 1922 refers to the decision of the High Court on question of law referred to it and the grounds on which such decision is based. Where the High Court passes an interlocutory order calling upon the tribunal to make a supplemental statement of the case, it cannot be said that it was a judgment against which an appeal was competent under section 66(5) of the Act: *Pehlad Turkey Reddy Works Co Ltd. v. Commissioner of Income Tax*, A.I.R. 1963 S.C. 1484. An unsigned judgment is no judgment when a judge dies before delivering it: *Surendra Singh v. State of U. P.* 1954 S.C.R. 330.

A I. R. 1957 S. C. 532

210 Industrial Matter

A dispute as to whether three persons or two persons should work a calender Machine is a matter relating to work and is therefore covered by the term industrial matter as used in C. P. and Bihar Industrial Disputes Settlement Act, 1947 *Model Mills, Manager v. Dharam Dass*, A I R 1958 S C 311.

211 Industry.

The fact that the Government is running a hospital will not take it out of the definition of the word 'industry'. It is a question of fact as to whether a particular undertaking is industry or not. It will depend more upon the character of the activity than upon who is conducting the activity. *State of Bombay v Hospital Mazdoor Sabha* A I. R. 1960 S. C. 610.

212 In lieu of payment

The words "found to be due" as used in Section 49 E of the Income Tax Act 1922 are to be interpreted in consonance with the expression 'in lieu of payment.' Thus understood it means that some payment outstanding i.e. there is some subsisting obligation on the Income Tax Officer to make some payment. *Hindustan Construction Co v S. Gaitonde*, A I. R. 1965 S. C. 1316

213 In matters of religion.

The word 'religion' as used in Article 26 of the Constitution of India was considered by the Supreme Court in *Sri Venkateswaramon Devark v. State of Mysore*, A I R. 1958 S C 225 and it was held that the freedom of religion in our Constitution is not confined to religious beliefs but extends to essential religious practices as well subject to the restriction which the Constitution has laid down *Sarup Singh v State of Punjab*, A I. R. 1959 S. C. 860

214 In other cases before the judgment is pronounced.

These words are used in Criminal Procedure Code 1898. The words in other cases can refer only to proceedings which end in a regular judgment and not in any interim order like commitment. The word judgment though not defined yet is a word of general import and means only judicial proceedings or the decision of a court. The phrase "in other cases before the judgment is pronounced" as used in Section 494 Criminal Procedure Code, 1898 would apply to all those cases other than those tried by jury. An application for withdrawal with the consent of court will lie even at the committal stage. *State of Bihar v Ram Naresh*, A I R. 1957 S C 389

215 In respect of

The words in respect of, as used in section 3(14) of the Railways Act. 1890 are wide enough to permit charges being made as terminals so long as any of these things viz Stations, sidings, wharves, depots, warehouses, cranes and other similar matters have been provided and are being maintained. The generality of the language used cannot be curtailed and these words may be taken to mean for the provision of and not for the user of *Shahdara (D) K Light Rly. Co. v. V. D. S. Mills*, A. I. R. 1960 S. C. 655.

216. In the course of export.

Article 286 (1)(b) of the Constitution of India protects only sale under which the export is made and not that which precedes such a sale. *East*

Indian Tobacco Co. v. State of Andhra Pradesh, A. I. R. 1962 S. C. 1733.

The words in the course of etymologically denotes movement from one point to another. The expression in the course of implies a period of time during which the movement is in progress. A sale in the course of export out of the country should be understood as meaning a sale taking place not only during the activities directed to the end of exportation of the goods out of the country but also as a part of or connected with the such activities. The word course conveys the idea of a gradual and continuous flow an advance, a journey, a passage, from one place to another: *State of Travancore Cochin v. S. V. C. Factory*, A. I. R. 1953 S. C. 333.

217. In the interest of public

The words in the interest of public as used in section 2 and 3 of the Punjab Special Powers Press Act, 1956 are of great amplitude and are of much wider connotation than the words for the maintenance of. The expression in the interest of makes the ambit of the protection very wide for a law may not have been designed to directly maintain public order or to directly protect the general public against any particular evil and yet it may have been brought on a statute book in the interests of public order: *Virendra v. State of Punjab*, A.I.R. 1957 S.C. 896.

S. 295A I.P.C. which provides punishment for insulting religious beliefs is in the interest of public order: *Ramji Lal Modi v. State of U.P.*, A.I.R. 1957 S.C. 620.

218. In the way of his business as agent.

The expression in the way of his business as agent as occurring in Section 409 of the Indian Penal Code means that the property is entrusted to the Agent in the ordinary course of his duty or habitual occupation or profession or trade. The Agent should get the entrustment or dominion over the property in his capacity as agent. If a person is entrusted with the property in the course of his duties as an agent the requirements of the section 409 of the Indian Penal Code would be fulfilled. A person may be an Agent of another for some purpose and if he is entrusted with the property not in connection with that purpose but for another purpose that entrustment will not be entrustment for the purposes of Section 409 if any breach of trust is committed by that person. Entrustment of property in the capacity of an Agent will not by itself be sufficient to make the criminal breach of trust by the Agent a graver offence than any of the offences mentioned in section 406 to 408: *R. K. Dalmia v. Delhi Administration*, A. I. R. 1962 S. C. 1821.

219. Judgment.

The word judgment as employed in reference to section 66(5) of the Income Tax Act, 1922 refers to the decision of the High Court on question of law referred to it and the grounds on which such decision is based. Where the High Court passes an interlocutory order calling upon the tribunal to make a supplemental statement of the case, it cannot be said that it was a judgment against which an appeal was entertained under section 66(5) of the Act: *Pehladi Turkey Reddy v. Commissioner of Income Tax*, A.I.R. 1963 S.C. 1484. An order when a judge dies before delivering it: *Singh v. State of U. P.*, 1954 S.C.R. 330.

220 Judicial Proceedings.

To decide a matter in a judicial manner, it involves that the parties are entitled to be heard in person in support of it. It also imports an obligation on the part of the authority to decide the matter on a consideration of evidence adduced in accordance with law: *Virendra Kumar v. State of Punjab*, A.I.R. 1956 S.C. 153. The proceedings conducted under section 37 of the Income Tax Act, 1922 are judicial proceedings: *Moti & Co. v. Viswanatha Sastri*, A.I.R. 1954 S.C. 545.

221. Just and Equitable.

Order for winding up because of mismanagement of Director is covered: *Rajahmundry Electric Co Ltd v. Nageshwar Rao*, 1956 S.C.R. 1066, A.I.R. 1956 S.C. 213. The word "just and equitable" in S. 162 of Companies Act, 1913 (vi) are not to be construed *ejusdem generis* with matters mentioned in cls. (i) to (v) and, therefore, whether mismanagement of the Directors is a ground for a winding up order under S. 162 (vi) becomes a question to be decided on the facts of each case.

222. Jurisdiction

The expression jurisdiction does not mean the power to do or order the act impugned, but generally the authority of the judicial officer to act in the matter: *Anwar Hussain v. Ajoy Kumar*, A.I.R. 1965 S.C. 1657.

223. Lands.

The word lands as used in Entry 49 of List 2 of Schedule 7 of the Constitution of India is wide enough to include all lands whether agricultural or not, and it would be plainly unreasonable to assume that it includes only non agricultural lands but does not include agricultural lands: *Jagan Nath Baksh Singh v. State of U. P.*, A. I. R. 1962 S. C. 1563.

224. Law

An agreement between a ruler and a company expressed in the shape of a contract cannot be regarded as a law. A law must follow the customary forms of law making and must be expressed as a binding rule of conduct. Where a company purchased a textile mill from a ruler of a State and the ruler undertook to exempt the company from taxes and octros and also granted some more privileges, it was held that the agreement cannot be treated as law. *Bengal N. C. Mills v. Board of Revenue*, A. I. R. 1964 S. C. 889. Law includes industrial law as evolved by industrial decision: *P. T. Services v. S. I. Court*, A.I.R. 1963 S.C. 114. An executive order by an absolute monarch is not law. *Raj Kumar v. State*, A. I. R. 1964 S. C. 1793.

Includes notifications *Madhubhai Gandhi v. Union of India*, (1961) 1 S.C.R. 121 - A. I. R. 1961 S. C. 1019. Principles of natural Justice are not covered by the definition of law *Ram Chandra Prasad v. State of Bihar* (1962) 2 S. C. R 50 - A. I. R. 1951 S. C. 1629.

The word law in force as used in Article 20(1) of the Constitution of India are to be given their natural meaning. So understood it means law in fact in existence and in operation at the time of the commission of offence as distinct from the law, the law deemed to have become operative by virtue of the power of legislature to pass retrospective law: *Shiv Bhadur Singh v. State of U. P.*, A.I.R. 1953 S. C. 395.

225. Lawfully.

The word lawfully as used in section 70 of the Contract Act means

that some lawful relation should exist between person claiming compensation and person against whom it is claimed. This relationship arises not because the party claiming compensation has done something for the party against whom the compensation is claimed but because what has been done by the former has been enjoyed and accepted by the latter: *State of West Bengal v. B. K. Mondal & Sons*, A. I. R. 1962 S. C. 779.

226. Laws of a State.

The words laws of a State as used in Article 286 (2) of the Constitution of India should not be given a narrow or restricted meaning. The law of the State signify, in its ordinary acceptation, whatever is an expression of the legislature as distinguished from the executive or judicial organ of a State. But the expression law of a State used in its broader sense would mean everything which prevails in a State as law: *Sundaramir v. State of Andhra Pradesh*, A. I. R. 1958 S. C. 469.

227. Lease and lend.

The term lease and lend signify a scheme which was introduced by the Government of India in the year 1942 as a war measure to facilitate the import of certain essential goods and to conserve them for the effective prosecution of war. Oil and lubricants were the main item which were controlled under the scheme. Under this scheme the Government, prohibited the direct import of oil and lubricants from America through private agencies, whether individuals, firms or company and took upon itself to import the required quantity. The procedure adopted in the import of goods was this that the importers were to state their requirements to the committee formed by the Government which sent the same to Government. Then on the intimation given by the Government the dealers were to make deposit on account of price to be paid for the goods. The Government had a purchasing agent in America and he was required by them to purchase the requisite goods and to arrange to get them transferred to the destinations mentioned by the various dealers. This scheme was given the name of lease and lend: *Leach and Co. v. M/s. Jardine Skinner and Co.*, A. I. R. 1957 S. C. 359.

228. Letter of cover.

The term "letter of cover" is well known in trade world. A letter of cover though contains a contract of insurance but is not a policy of insurance in the common understanding of this word of trade. It is well known that in order to obtain an insurance against the risk of fire, the assured has first to send a proposal to the insurer and then the insurer takes a little time in making enquiries as to whether it would accept the proposal and undertake the obligation of covering the risk. The insurer issues a policy only after he is satisfied that it is prudent to do so, experience of trades people has however shown that some kind of protection for the interim period when the insurer is making the enquiries is necessary. This protection is afforded by what is called letter of cover: *R. Ratilal and Co. v. National Security Assurance Co. Ltd.*, A.I.R. 1964 S.C. 1396.

229. Legislature.

The meaning of the word legislature has to be ascertained keeping in view the subject and the context in which it is used in various Articles. The word legislature has been used in various articles in different sense and some times in the same Article the word may be

construed differently In Article 389 of the Constitution the word has been used in the larger sense namely comprising all the units that are concerned with legislative process *Bharikhendra v State of Assam*, A I R 1956 S C 503

230 Lend and loan

The word lend in the ordinary sense means to deliver to another a thing for use on the condition that the thing given on loan shall be returned with or without compensation for the use made of it by the person to whom it was lent The subject matter of lending may be money

A loan contracted may create a debt but a debt may be created without there being any loan When a person deposits foreign currency in the current account of a bank in order to draw it whenever necessary it cannot be said that he enters into a contract of loan with the bank within the meaning of section 4 of the Foreign Exchange Regulation Act 1947 *Ram Rattan v Director of Employment* A I R 1966 S C 495

231 Material witness

The test whether a witness is material for particular purpose or not is not whether he would have given evidence in support of defence the test is to see whether he is an essential witness to the unfolding of the narrative on which the prosecution is based The test is to see how much could he speak to put forward the prosecution case *Narain v State of Punjab* A I R 1959 S C 484

232 Matter

The word matter as used in section 83 (2) Representation of the People Act 1951 is not the same thing as particulars *H C Bajpai v Tirlokh Singh* A I R 1951 S C 44

233 Matters

The expression matters of religion as used in Article 26(b) of the Constitution of India would embrace all those matters of doctrine and belief pertaining to religion but also the practice of it In the terms of Hindu religion it means not only Gnana but also its *Bhakti* and *Karma* *Kandas Venkataramana Devaru v State of Mysore*, A I R 1953 S C 255

234 Memorial and petitions

If article 320 (3) of the Constitution of India is given a strict construction an application for review would fall within the meaning of the word memorial or petitions *State of U P v Manbodhan Lal* A I R 1957 S C 912

235 Migrate or migrated

The word migrated taken by itself is capable of the wider construction come from one place to another whether or not with an intention of permanent residence in the latter place It is beyond controversy that the word migrated is often used also in the narrower connotation coming from one place to another with the intention of residing permanently in latter place The fact that the Constitution makers did not use the words with the intention to reside permanently in Article 6 is however no reason to think that the wider meaning was intended When the framers of the Constitution used the words migrated to the territory of India they meant come to the territory of India with the intention of residing there per

manently. It may some times happen that when a person moves from one place to another or from one country to another he has, at the point of time of moving an intention to remain in the country where he moved only temporarily, but later on forms the intention of residing there permanently. There can be no doubt that when this happens, the person should at this latter point of time be held to have 'come to the country with the intention of residing there permanently'. In other words, though at the point of time he moved into the new place or new country, he cannot be said to have migrated to this place or country, he should be held in law to have migrated to this latter place or country at the latter point of time when he forms intention of residing there permanently. Migration for the purposes of Article 6 which is made an essential requirement must have taken place before the commencement of the Constitution. The words 'migrated to the territory of India' mean 'migrated at any time before the commencement of the Constitution to a place now in the territory of India: *Shanno Devi v. Mangal Sain*, 1961 Doabia's Election Cases 53.

236. Modification.

The word "modification" as used in Article 370(1) of the Constitution is capable of a meaning which would enable the President to bring about the changes which are considered radical. The word "modification" is to be given the widest possible meaning: *Puran Lal v. President of India*, A.I.R. 1961 S.C. 1519.

Suspension of a right is not modification. *Raghu Singh v. Court of Ward* 1953 S.C.R. 1094. A.I.R. 1953 S.C. 273. Conferring of ownership right on tenants under the law is extinguishment or modification of rights. *Sri R. R. Narain Medhi v. State of Bombay*, A.I.R. 1959 S.C. 459.

237. Modify.

The word "modify" as used in Section 76 of the Bombay Municipal Boroughs Act, 1925 includes enhancement also. This is clear from the fact that the legislature has dropped the word 'reduce' and has in its place substituted the word 'modify'. *W. I. Theatres v. Municipal Corporation, Poona*, A.I.R. 1959 S.C. 586.

238. Movables.

For the meaning of the word "movables" see *Income Tax Commissioner v. Bharanaya Coal Co.*, A.I.R. 1959 S.C. 254.

239. Nationality and Citizenship

The term 'nationality' has reference to the juristic relationship which may arise for consideration under international law. On the other hand "citizenship" has reference to the juristic relationship under municipal law. In other words, nationality determines the civil rights of a person, natural and artificial, particularly with reference to international law, whereas citizenship is intimately connected with civic rights under municipal law. Hence all citizens are nationals of a particular State but all nationals may not be citizens of the State. In other words citizens are those persons who have full political rights as distinguished from nationals who may not enjoy full political rights and are still domiciled in that country. *S. T. Corpn of India v. Commercial Tax Officer*, A.I.R. 1963 S.C. 1811.

240. Not in accordance with

The term 'not in accordance with' has been interpreted in *G. P.*

Sonawala v Eastern Cotton Co A.I.R. 1958 S.C. 713 In this case section 8 of the Bombay Cotton Contract etc. Act, of 1932 was considered. It was held that the mere non mention of of the measurements in the contract note did not render the contract not in accordance with byelaw. When there was no byelaw to the effect which required the mentioning of measurement in the contract note, there was no defect to invalidate the transaction *G P Sonawala v. Eastern Cotton Co* A.I.R. 1953 S.C.

241 Not later than fourteen days

The words not later than fourteen days must be held to mean the same thing as within a period of fourteen days. The rule making authority can not intend to go further than what the section itself had enacted. If the language of Rule 119 is construed in conjunction with and under the coverage of section 81 (1) of the Representation of the People Act, 1951 under which it is framed the words must be given the meaning indicated above *Harinder Singh v Karnail Singh*, A.I.R. 1957 S.C. 271.

242. No appeal shall lie

The meaning of the word that no appeal shall lie as used in Section 3(1), proviso of the Income Tax Act, 1922 was discussed in *Commissioner of Income Tax Bombay v. M/s Filmistan* A.I.R. 1962 S.C. 1135 It was held that the meaning of the words 'no appeal shall lie' in the proviso is not that no memorandum of appeal can be presented. All that it means is that the appeal will not be held to be properly filed until the tax has been paid. If, for instance, the memorandum of appeal is filed on the 2nd day, i.e., 10 days before the period of limitation expires and the tax is paid within the rest of the 10 days, the appeal will be a proper appeal, it will be within time and no question of limitation will arise but if the tax is paid after the period of limitation has expired it will be taken to have been filed on the day when the tax is paid even though the memorandum of appeal was presented earlier and within the period of limitation. The question will then have to be decided whether there was sufficient cause for condonation of delay.

243 Normal Labour

For the meaning of the word see *Vahendra v Sushila*, A. I. R. 1965 S.C. 364.

244. Obtain

The word 'obtain' as used in section 5 (1) of the Prevention of Corruption Act, 1947 does not eliminate the idea of acceptance of what is given, through it connotes also an element of effort on the part of receiver. Acceptance of a voluntary offer may also fall within the meaning of obtain. A person may accept money that is offered or solicit payment of a bribe, or extort the bribe by threat or coercion, in each case he obtains a pecuniary advantage by abusing his position as a public servant. If a person obtains a pecuniary advantage by the abuse of his position he will be guilty under sub-clause (d) of clause (1) of section 5 of the Act. This offence and the offence of bribery have some common ingredients. *Rafiq Kishan v Delhi State*, A.I.R. 1956 S.C. 476

245 Occupation

The word 'occupation' as used in Bombay Rents Hotel and Lodging House Rates Control Act, 1947 does not necessarily refer to occupation as residence. The owner can occupy a place by making use of it in any

manner. Once the landlord establishes that he bonafide requires the premises for his occupation, he is entitled to recover possession of it from tenant; irrespective of the fact whether he would occupy the premises without making any alteration to them or after making the necessary alterations. The owner can occupy a place and make use of it in any manner. If the landlord on getting possession starts the work of demolition within the prescribed time, it would amount to occupation. Occupation in this sense would include occupation for demolition to make it fit for residence : *R. P. Mehta v. I. A. Sheth*, A.I.R. 1964 .C. 1676.

The word occupant has not been defined in U. P. Zamindari Abolition of Land Reforms Act, 1951. This word must be given its general meaning in which sense it would mean a person holding the land who is in actual enjoyment of the property. Between a landlord and a tenant and between a tenant and a sub tenant, the latter will be deemed to be the occupant : *Amba Parsad v. Mahaboob Ali*, A.I.R. 1965 S.C. 54.

246. Occupier.

The word "occupier" as used in Section 2 (n) and Section 100 of the Factories Act is not to be equated with the word owner. It happens in majority of cases that the ultimate control over a factory is that of the owner but the owner may transfer it to some other person. Thus a manager of factory who claims to have such a control must lay before the Chief Inspector of Factories the necessary material for showing that the company had in some manner transferred to him the entire control over the factory. If there is no such proof an application for renewal of licence may be rejected : *John Donald v. Chief Inspector*, A. I. R. 1962 S.C. 1352

247. Office of Profit

Though the members of the Committee of the Durgah endowment under Section 4 and 6 of the Durgah Khawaja Sahib Act, 1955 are appointed by Government of India, yet it is a body corporate with perpetual succession acting within the four corners of the Act. Merely because the Committee or the members of the Committee are removable by the Government of India or the Committee can make bye-laws prescribing the duties and powers of its employees cannot convert the servants of the Committee into holders of office of profit under the Government of India. The Mohatmim (Manager) of Madrasa Durga Khwaja Sahib Akbari is neither appointed by the Government of India nor is removable by the Government of India nor is paid out of revenues of India. The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenue are important factors in determining whether that person is holding an office of profit under the Government, though payment from a source other than the Government is not always a decisive factor. It was however held that the manager of the Madrasa does not come within the above test and is therefore not holder of profit : *Abdul Shakur v. Rikhab Chand*, A.I.R. 1958 S.C. 52.

248. Office under the State.

The expression office under the State must be given natural meaning. The office of village munsif under the Madras Hereditary Village Offices Act, 1895 is an office under the State. Article 16 of the Constitution would apply to Hereditary office holders as well : *Dashratha Rama v.*

State of Andhra Pradesh, A I R. 1961 S C 564

249 On whose behalf

The words on whose behalf may mean in whose favour or for whose benefit. Where in a challan form the election petitioner filled the name of Secretary Election Commission opposite the column on whose behalf money is paid it was held that on the proper construction of the word, it would mean that money is deposited in favour of or for the benefit of Election Commission. *O P Jain v Gian Chand* A I R. 1959 S C 837

250 Or

The word as used in Section 5 (2)(g) of the Rajasthan Nathdwara Temple Act of 1959 should be construed to mean and *Siri Govind Lal ji v State of Rajasthan* A I R 1963 S C 1648

251 Order

The implication of the word 'order' as used in Negotiable Instruments Act was considered in the case of *Rangarathan v Persakaruppan* A I R. 1959 S C 815

252 Ordinarily

The word ordinarily as used in the phrase 'should ordinarily be retained as occurring in Railway Establishment Code means in the large majority of cases but not invariably. This would show that though a person may be retained in service when he attains the age of 55 years yet the authorities are not bound to keep him. *Kalish Chandra v Union of India* A I R 1961 S C 134"

253 Or otherwise

The word otherwise as used in Section 2 (b) of the Madras Morumakkathayam (Removal of Doubts) Act 1955 in the context mean whatever may be the original of the receipt of maintenance. *Achuthi v State of Madras and Kerala* A I R. 1960 S C 180. The words 'otherwise' in this case were interpreted by taking help of the principle of *Ejusdem Generis*.

254 Other similar allowance

It was argued that even if the payment for production between the quota and the norm is not production bonus which can be taken out of the definition of basic wages it should be treated as payment in the nature of other similar allowance appearing in Section 2 (b) (ii) of Employees Provident Funds Act 1952. The Supreme Court held that this payment for work done between the quota and the norm cannot be treated as any 'other similar allowance'. The allowances mentioned in the relevant clause are dearness allowance house-rent allowance overtime allowance, bonus and commission. Any other similar allowance must be of the same kind. The payment in this case for production between the quota and the norm has nothing of the nature of an allowance. It is a straight payment for the daily work and must be included in the words defining basic wages i.e. all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment. *Jai Engineering Works v Union of India*, A I R 1963 S C 1488

255 Our Government

The expression "our government" as used in the Travancore Public Servants (Inquiries) Act (11 of 1122) means the Government of the State of Travancore. After the two States of Travancore and Cochin were merged,

the expression came to mean the Government of the new set up. The expression would relate to Council of Ministers when Council of Minister come into existence. *P. Joseph John v State of Travancore Cochin* A. I. R. 1955 S. C. 161

256 Paid

For the meaning of the term see *Income Tax Commissioner v L. IV Russell* A. I. R. 1965 S. C. 49

257 Panth

The word panth has association with Sikh Religion and is normally used to indicate Sikh Religion. The Supreme Court however in this particular case held that the word as used in the Election poster did not indicate that sense. *Kullar Singh v Mukhtiar Singh* 1965 A. I. R. S. C. 143

258 Parliament may by law provide

The words parliament may by law provide as used in Article 312 of the Constitution of India should not be read to mean that there is no scope for delegation in a law made under Article 312. The words may by law confer or may by law provide do not necessarily exclude delegation and it will have to be seen in each case how far the intention of the Constitution was that the entire provision should be made by law without recourse to any rules framed under the power of delegation. Where the intention of the Parliament that the numerous and varied rules should not be framed by itself and the various amendments to meet the difficulties of day to day administration should also not be made by Parliament is clear it cannot be said that the delegation of power is bad. *D. S. Gargwal v State of Punjab* A. I. R. 1959 S. C. 512

259 Part -

The word part when interpreted in the context as used in Section 6 (1) of the Land Acquisition Act 1894 where it is used to denote the contribution which is to be made by State wholly or partly does not mean substantial part and the court can examine as to whether this part contribution is enough to satisfy legal requirements. The decision of the Government to contribute Rupees 100 towards the cost of acquisition of land which was worth 45,000 was held to be sufficient compliance of law. *Somawansi v State of Punjab* A. I. R. 1963 S. C. 151

260 Pending

A legal proceeding is pending as soon as it is commenced and remains pending till it is concluded. *Asgarali Naarali v State of Bombay* A. I. R. 1957 S. C. 530

261 Person

The definition of person as given in section 3(42) General Clauses Act 1897 cannot be applied to section 4 of the Partnership Act 1932. The words as used in the Partnership Act contemplates only natural or artificial i.e. legal persons and a firm is not a person and as such is not entitled to enter into partnership with another firm or Hindu undivided family or individual. To import the definition of person as given in General Clauses Act into Partnership Act will be totally repugnant to the subject of partnership law. *Dulchand v Income Tax Commissioner* A. I. R. 1956 S. C. 354

Includes companies *Motipura Zimindari Co v State* 1935 S. C. R. 720

262 Personally

Where the provision of law requires that the application should be signed by the partner in person the signature of the agent will not be sufficient. The word personally as used in Rule 39 of the Income Tax Rules 1922 requires that the application be signed by the partner in person and therefore the signature by an agent would not be enough. *Suba Rao v Income Tax Commissioner* A I R 1956 S C. 605

263 Person practising before the court

The argument that the words person practising before the court as used in Article 145 of the Constitution of India are narrower than the court as used in Entry 77 of the Union List and that by a rule made under Article 145 of the Constitution the Supreme Court could neither entitle a person to practise nor impose qualifications as to the right to practise as these are matters entirely within entry 77 and therefore fall exclusively for parliamentary legislation was not accepted by the Supreme Court in *re Lily Isabel Thomas* A I R 1964 S C 855. It was held in this case that the words have been used in comprehensive sense so as to include a rule not merely as to the manner of practise but also of the right to practise or entitlement to practise. This interpretation it was observed does not give rise to any anomaly.

264 Permission

The word permission is a word of wide import when it is used in section 21 of the Foreign Exchange Regulation Act 1947 in means only leave to do some act which but for the leave would be illegal. The word permission as used in section 21 has different meaning from the word authorise and exempt. *M/s D G Gobind Ram v Shamji and Co* A I R 1961 S C 1285

265 Picketing

The term picketing as used in Vindhya Pradesh Police Regulations Regulation 236 is used not in the sense of offering resistance physical or otherwise to the visitor or even dissuading him from entering the house of the suspect but merely watching and keeping the record of visitors. *Kharak Singh v State of U P* A I R 1963 S C 195

266 Possessed

See *Gurramalapuram Taggana Malanda v Viranna* A I R 1959 S C 577

267 Practise

The word practise means exercise of any profession or occupation. When a Chartered accountant is working as a liquidator in pursuance of an order passed by the High Court he must be deemed to be practising within the meaning of Section 2(2) of the Chartered Accounts Act 1949. While acting as a liquidator he must be deemed to be in practice as Chartered Accountant. Misconduct while working as liquidator will thus amount to professional misconduct on the part of Chartered Accountant. *Institute of Chartered Accountants v Mukerjee* A I R 1958

268 Practise and Procedure

The term practise in its larger sense like procedure denotes the mode of proceedings by which a legal right is enforced as distinguished from the law that gives and defines the right. Procedure denotes the mode in which successive steps in litigation are taken. *State of Seraskella v Union of India*, A I R 1957 S C 253

269. Police Officer.

The words "police officer" as used in Section 25 of the Evidence Act are to be construed in their popular sense. They are not to be given a narrow or restricted meaning. But at the same time they are not to be construed so widely that they may include persons who have been given only some of the powers to be exercised by the police officers. What is pertinent to bear in mind for the purpose of determining as to who can be regarded as a police officer for the purpose of section 25 of the Evidence Act 1872 is not the totality of the powers which an officer enjoys but the kinds of power which the law enables him to exercise. The test for determining whether such a person is a police officer for the purpose of section 25 of the Evidence Act would be whether the powers of a police officer which are conferred on him or which are exercisable by him because he is deemed to be an officer in charge of police station establish a direct or substantial relationship with the prohibition created by section 25 i.e. recording a confession. A person exercising limited power of a police officer under the Sea Customs Act 1878 or Bihar and Orissa Excise Act, 1915 would also be covered and a confession made before such a person would be inadmissible in evidence: *Raja Ram v. State of Bihar*, A.I.R. 1944 S.C. 228; *State of Punjab v. Barkat Ram*, A.I.R. 1962 S.C. 276; 1962 (3) S.C.R. 328.

270. Previous operation

For the meaning of this expression see *Indira Sohan Lal v. Custodian of E. P.*, A. I. R. 1956 S. C. 77

271. Previous years.

The word "previous years" as used in Section 2 (ii) of the Income Tax Act, 1922 mean the year which is previous to the year of assessment. It naturally follows that there can be only one previous year to a given year of assessment. The same word which appears in the proviso to section 2(6A) (c) of the Income Tax Act, 1922 speaks of six previous years. In this proviso these words have different meaning than that of when it occurs in section (ii) because it will be a contradistinction in terms to speak of six previous years in relation to any specified assessment years; *M/s. Dhandhanika Keda & Co. v. The Commissioner of Income Tax*, A. I. R. 1959 S. C. 219.

272. Producer and consumer.

The word "producer" as used in Central provinces and Berar Electricity Duty Act, 1949 means any person who produces electricity and consumer would include any person who consumes electrical energy. A producer consuming electrical energy produced by himself is also a consumer and is liable to pay the duty as imposed by law: *J. C. Mills v. State of Madhya Pradesh*, A. I. R. 1963 S. C. 414.

273. Property.

The word property as used in Indian Penal Code is much wider than the expression movable property. There is no justification in restricting the meaning of the terms to movable property only when it is used without any qualification in section 405 of the Indian Penal Code. Whether the offence defined in a particular section of the penal code can be committed in respect of a any particular kind of property will depend not on the interpretation of the word property but on the fact whether that particular kind of property can be subject to the acts covered by that Sub section: *R. K. Dalmia v. Delhi Administration*, 1962 S. C. 1831.

Managing agency is a business and would therefore fall within the definition of property as defined in Section 4 (3)(i) of the Income Tax Act 1922. The word property is a term of the widest import and subject to any limitation which the context otherwise requires it signifies every possible interest which a person can acquire hold and enjoy unless there is something to the contrary. Business would be property. The office of the managing agency no doubt requires the performance of the services but there is no antithesis between services and business as there are several kind of business which involves the performance of services such as insurance and commission agencies. The true test is to see whether the services are regular source of income and if it is so that service or business would fall within the definition of property. *J K Trust v Commissioner of Income Tax E P T Bomlay* A I R 1957 S C 846

Shleiship is property Angusala v Debabrata 1951 S C R. 1125
A I R 1951 S C 294

The right of a mahant's property *S T Swamier v Commr* A. I R. 1963 S C 96. His right to enjoy property is property of which he cannot be deprived. *Commr v T L Swamier* 1954 S C R. 1005 A I R. 1954 S C 282. *Sadasib Mahesh v State of Orissa* A I R 1956 S C 432

Right to use public highway is not property. *Saghir Ahmad v State of U P*, 155 S C R 707 A I R 1954 S C 728. Deferred payment is not right to property. *The Lord Krishna Sugar Mills Ltd v Union of India*, A I R 1959 S C 1125

Right of share holder to elect directors to pass resolutions and to apply for winding is not property. *Charanjit Lal v Union of India* 1950 S C R. 869 A I R 1951 S C 41

Rights of quasi permanent allottee are not property. *Amar Singh v Custodian* E P 1957 S C R. 801

274 Profess

The word profess as used in the Constitutional (Scheduled) Castes Order 1950 clause 31 as been used in the sense of an open declaration by a person of the Hindu or Sikh Religion. *Punjab Rao v D P Meshram* A I R 1965 S C 1179

275 Public purpose

Requisition of houses for servants of Road Transport Corporation is a public purpose. *State of Bombay v R Nagi* 1956 S C R. 18 A I R 1956 S C 294

The inclusive definition of public purpose as given in Section 2(6) of Land Acquisition Act is not very useful in ascertaining the ambit of that expression. However when this word is interpreted broadly it would include a purpose in which the general interest of the community as opposed to the particular interest of the individual is directly and vitally concerned. Public purpose is bound to vary with the times and prevailing conditions in a given locality. It would be impracticable to give this word a rigid definition. It is for this reason that legislature has left it to the executive to decide as to what is public purpose. *Soma Wanti v State of Punjab* A I R 1963 S C 151

Requisitioning for the benefit of a member of the consulate is for public purpose. *State of Bombay v Ali* (1955) 2 S C R. 867 A. I R 1955 S C 810

276. Punishment.

The ordinary dictionary meaning of the word punish is to cause the offender to suffer the offence or to inflict penalty on the offender or to impose penalty for the offence. Punishment may be defined as penalty for the transgression of law and the word punish may denote or signify some offence committed by the person who is punished. Any action of the employer to the detriment of the employee would not be punishment so long as no offence was found to have been committed by the employee. Suspension would therefore be not punishment even though it may be of indefinite duration. Suspension without pay pending enquiry cannot be considered as a punishment as such suspension without payment would be an interim measure and would last till the question as to whether the employee should be punished or not is decided. Such suspension orders are only meant as security or precautionary measure taken in the interest of the employers : *L. D. Sugar Mills v. Pt. Ram Sarup*, A.I.R. 1957 S.C. 82.

277. Purebasers's advance.

For the meaning of the term see *Delhi Cloth and General Mills v. Harnam Singh*, A.I.R. 1955, S.C. 590.

278. Purport.

The word purport has many shades. It may some time mean fictitious what appear on the face of instrument the apparent. Therefore any act which purports to be done in exercise of a power is to be deemed to be done within that power not withstanding that the power is not exercisable. Purporting is, therefore, indicative of what appears on the face of it or is apparent even though in law it may not be so. *Ajiminina v. Deputy Custodian*, A.I.R. 1951 S.C. 365.

279. Reduction.

Abolition cannot be equated with reduction. The word "reduction" can only be used when something is left after reduction. To speak of abolition as reduction the whole thing does not seem sensible and cannot be conciled. The term reduction in the number of persons employed or to be employed as mentioned in C. P. and Berar Industrial Disputes Settlement Act, 1947 does not cover abolition of all posts in an establishment : *Motor Transport Controller v. P. R. M. Kamgar Union*, A. I. R. 1964 S. C. 1690.

When, a permanent man returns from deputation, there is a reduction in the number of posts available for Government Servants not in permanent service. The word reduction in the context is not necessarily confined to abolition. Keeping certain posts in abeyance comes within the expression : *K. S. Srinivasan v. Union of India*, A. I. R. 1958 S. C. 426.

Reversion from an officiating post is reduction in rank if it is by way of punishment for instance where it results in loss of seniority : *Madhav Laxman v. State of Mysore*, A. I. R. 1962 S. C. 8. Reversion because of non-suitability is not by way of punishment : *State of Bombay v. T. A. Alraham*, A. I. R. 1962 S. C. 794. Loss of some place in the seniority list is, however, no reduction : *High Court Calcutta v. Anil Kumar*, A. I. R. 1962 S. C. 170.

A reduction in rank may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty for he will then lose the emoluments and privileges of that rank. If how-

ever he has no right to the particular rank his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the Government servant has no title to the post or rank or the Government has by contract express or implied or under the rules the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find if the servant has been visited with any penal consequences. Thus if the order entails or provides for the forfeiture of pay or allowances or the stoppage or postponement of the future chances of promotion then the circumstances may indicate that although in form the Government had purported to exercise its right to terminate the employment under the rules in truth and reality the Government has terminated the employment as and by way of penalty. *Madhav's case Supra.*

280 Religion

For the meaning of this term see *Shri Venkataraman v State of Mysore*
A I R 1958 S C 225

281 Removal.

For the meaning of this term see *Moti Ram v V E F Railway*
A I R 1964 S C 600

282 Remove

For the meaning of this term see *Moti Ram v N E F Railway*
A I R 1964 S C 600

283 Remuneration

The word remuneration as used in Section 10 (1) (h) as the Banking Companies Act, 1949 prior to its amendment in 1956 has been used in the widest sense of any recompence for services rendered whether the payment is voluntary or under a legal obligation. When the term is so interpreted it will include bonus as well. Bonus in the industrial sense as understood in our Country comes out of surplus of profits and when paid it fills the gap wholly or in part between the living wage and the actual wage. It is an addition to the wage in that sense whether it be called contingent or supplementary. None-the-less it is labour's share in the profits and as it is remuneration which takes the form of a share of profits it comes within the mischief of Section 10 of the Banking Companies Act 1949. *Central Bank of India v Its employees* A I R 1960 S C 12

284 Rendered illegal

The word 'rendered illegal' as used in section 42 (1) (g) of the C. P and Berar Industrial Disputes Settlement Act 1947 has been deliberately used in contradistinction to the words held illegal used in sections 43 44 and 45 of the Act. The employer is not prohibited from taking action against such employer even before the strike is declared to be illegal under section 41 of the act. *Labour Commr Malhya Pradesh v Burhanpur Taps Mills*
A I R 1964 S C 1687

285 Resides.

The crucial words of the sub section are resides and where he last resided with his wife. Under the Code of 1882 the Magistrate of the District where the husband or father as the case may be resided only had jurisdiction. Now the jurisdiction is wider. It gives three alternative forums. This has been designedly done by the Legislature to enable a discarded wife

or a helpless child to get the much needed and urgent relief in one or other of the three forums convenient to them. The proceedings under this section are in the nature of Civil proceedings, the remedy is a summary one and the person seeking that remedy is ordinarily a helpless person. So the words should be liberally construed without doing any violence to the language: *Jagir Kaur v. Jaswant Singh*, A.I.R. 1963 S.C. 1523.

286. Retrenchment.

A service cannot be said to be terminated unless it was capable of being continued. If it is not capable of being continued, that is to say in the same manner in which it had been going on before and it is, therefore, brought to an end, that is not a termination of the service. It is the contract of service which is terminated and that contract requires certain physical fitness in the workman. Where therefore a workman is discharged on the ground of ill health, it is because he was unfit to discharge the service which he had undertaken to render and therefore it had really come to an end itself. That this is the idea involved in the definition of the word "retrenchment" is also supported by S. 25-G the Industrial Disputes Act 1947 which provides that where any workmen are retrenched and the employer proposes to take in his employ any other person he shall give an opportunity to the retrenched workmen to offer themselves for re-employment and the latter shall have preference over other persons in the matter of employment. Obviously, it was not contemplated that one whose services had been terminated on grounds of physical unfitness or ill-health would be offered re-employment. It was because his physical condition prevented him from carrying out the work which he had been given that he had to leave and no question of asking such a person to take up the work again arises. If he could not do the work he could not be offered employment again. It would follow that such a person cannot be said to have been retrenched within the meaning of the Act as amended by the Ordinance. *Workmen v. Bangalore W. C. & S. Mills Co.*, A.I.R. 1962 S.C. 1363 at page 1366.

287. Right to practise.

The word right to practise would in normal connotation take in not merely right to plead but right to act as well. *In re Lilly Isabel Thomas*, A.I.R. 1964 S.C. 835.

288. Sale of goods.

For the meaning of the expression see : *State of Madras v. Gannon* A.I.R. 1958 S.C. 560.

289. Salary.

The terms salary and wages are emoluments which are paid to employees by way of re-compense for their labour. Salary as distinguished from wages is remuneration paid to an employee whose period of engagement is more or less permanent in character. *Mohmedali v. Union of India*, A.I.R. 1964 S.C. 980.

290. Satisfied

The important words which came for consideration before the court were "satisfied on the evidence". These words imply that the duty of the Court is to pronounce decree if satisfied that the case for the petitioner has been proved but dismiss the petition if not so satisfied. In a suit based on a matrimonial offence it is not necessary and it is

indeed rarely possible to prove the issue by any direct evidence for in very few cases can such proof be obtainable *White v. White* A.I.R. 1958 S.C. 441

291. Seduction.

There are three principal ingredients of the offence.

- a) that a minor girl below the age of 18 years is induced by the accused.
- b) that she is induced to go from any place or do any act, and
- d) that she is so induced with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person.

A person who merely accompanies a woman going out to ply her profession of a prostitute even if she has not attained the age of eighteen years does not thereby commit an offence under S. 376A of the Indian Penal Code. It can not be said that thereby the person induces her to go from any place or to do an act with the intent or knowledge contemplated by the section *Ramesh v State of Maharashtra*, A.I.R. 1962 S.C. 1908 at page 191f

292. Secrete

For the meaning of the expression see *Radha Kishan v. State of U.P.*, A.I.R. 1963 S.C. 823

293. Seizure

The question that arose was whether the possession obtained by the Customs department, by goods being conveyed to and deposited at the nearest Customs house is within the last words of the second paragraph of S. 180 of the Sea Customs Act 1878 and are goods which have been seized under the Act within opening words of S. 178 A. It would be seen that these sections which have to be read together, draw a distinction between seizure under the Act and a seizure under provisions of other laws. The seizure from the owner of the property under S. 180 of the Sea Customs Act, 1878 is not a seizure under the Act but by a police officer effecting the seizure under other provisions of the law for instance the Criminal Procedure Code. This is made clear by appropriate language in the first paragraph of S. 180. *Gian Chand v State of Punjab*, A.I.R. 1962 S.C. 499.

294. Service of notice

For the meaning of the expression see *Nilakanta v. Kharalal*, A.I.R. 1962 S.C. 666

295. Shall presume

Where it is proved that a gratification has been accepted then the presumption shall at once arise under the section. It introduces an exemption to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the legislature has chosen to use the words shall presume and not may presume the former being presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but S. 4 of the Prevention of Corruption Act is *in pari materia* with the Evidence Act because it deals with a branch of law of evidence e.g. presumptions, and therefore should have the same meaning.

It is a presumption of law and therefore it is obligatory on the court to raise this presumption in every case brought under S. 4 of the Prevention of Corruption Act: *State of Madras v. Vaidyanatha Iyer*, A.I.R. 1958 S.C. 64.

296. Shop.

For the meaning of the expression see: *Kalidas v. State of Bombay*, A.I.R. 1955 S.C. 877.

297. Statement.

For the meaning of the word see: *Bhogilal Chunilal v. State of Bombay*, A.I.R. 1959 S.C. 356.

298. Strike.

"Strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment: *Section 2(g) Industrial Disputes Act, 1947*.

Strike is a recognised weapon of the workmen to be resorted to by them for asserting their bargaining power. It is to be used as last resort when all other avenues for settlement of industrial disputes as provided for in statutory machinery fail.

Strike does not by itself put an end to the relationship of employer and employee. The employer cannot be given an unqualified right to dismiss a workman simply because he has joined a strike which is ultimately found to be unjustified. But at the same time to withhold the right from the employer in every case of unjustified strike may lead to various bad consequences on economy.

The legality of the strike depends on the provision of section 22 of the Industrial Disputes Act, 1947 in the case of public utility service and the question whether it was provoked or not is immaterial.

Is the pen down strike a strike within Section 2 (q) of the Act or not? Section 2 (q) defines a strike as cessation of work by a body of persons employed in any industry acting in combination or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment. In a plain and grammatical construction of this definition it would be difficult to exclude a strike where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work. Refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees enter the premises of the employer and refuse to take their pens in their hand that would no doubt be a strike under Section 2 (q). The main grievance of the Bank was that these employees not only sat in their places and refused to work but that they would not vacate their seats when they were asked to do so by their superior officers. Such conduct may introduce an element of insubordination but that is an entirely different matter. The pen down strike in which the employees participated cannot be said to be outside Section 2 (q) of the Act. *Punjab National Bank v. A. I. P. N. B. E. Federation*, A.I.R. 1960 S.C. 160 at page 176.

299. Subordinate.

The legislature has used the word "subordinate" in S. 165 Indian Penal Code without any limitation. There is no justification for reading into the word,

the words in respect of those very functions. It is plain that the addition of some words in the section is clearly not permissible. By the use of the word subordinate without any qualifying words the legislature has expressed its legislative intention of making punishable such subordinates also who have no connection with the functions with which the business or transaction is concerned. It is wrong to limit the meaning of subordinate in the section because this would be defeating the legislative intention and laying down a different legislative policy. This the Court has no power to do. The argument that subordinate means something more than administratively subordinate was rejected. The appellant in the case was held to be subordinate to the Joint Chief Controller, even though the appellant had no functions to discharge in connection with or before the Joint Chief Controller of Imports and Exports. *R G Jacob v Republic of India*, AIR 1963 SC 500.

300 Substance

The appropriate meaning of the expression 'substances' in the section is things. It cannot be disputed that absorbent cotton wool roller bandages and gauze are substances within the meaning of the said expression. The said articles are sterilized or otherwise treated to make them disinfected and then used for surgical dressing they are essential materials for treatment in surgical cases. Besides being aseptic these articles have to possess those qualities which are useful in the treatment of diseases. *Chimanlal v State of Maharashtra* AIR 1964 SC 666.

301 Subject to

The words 'subject to' as used in Madras General Sales Tax Act 1939 on a proper interpretation means that the exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act whether in the rules or in the licence itself that is a licensee is exempt from assessment as long as he conforms to the conditions of the licence and not that he is entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. The use of the word 'subject to' has reference to effectuating the intention of the law. Interpreted in this light it means 'conditional upon'. *Balkisla & Sons v State of Madras*, AIR 1961 SC 1152.

302 Substantial Question

For the meaning of the expression see *Ganga Ram v Fishery Society* AIR 1957 SC 376.

303 Substantial and Compelling reasons

In an appeal against acquittal the appellate Court has full power to review the full evidence on which the order of acquittal is founded. The terms substantial and compelling reasons or good and sufficiently cogent reasons or strong reasons are not intended to restrict the power of the appellate Court to appreciate the evidence on which acquittal order is based. *Santwal Singh v State of Rajasthan* AIR 1961 SC 715.

304 Taking and retaining possession

For the meaning of the term see *Bhinka v Charan Singh* AIR 1959 SC 965.

305 Temple

For the meaning of expression see *Poohari Fakir v C H R E*,

A. I. R. 1963 S. C. 510

306. Terminal tax.

Tax levied when goods are exported or imported is called terminal tax : *Burmah Shell Co., v. Belgaum Municipality*, A. I. R. 1963 S. C. 906.

307. Trade business or commerce

For the meaning of expression see: *N. Rao v. A. P. S. R. T. Corporation*
A. I. R. 1959 S. C. 308.

308. Tribunal

For the meaning and scope of expression see: *T. C. Basspa v. T. Naggapa*, A. I. R. 1954 S. C. 441

309. Tribute

Payment of 'hukamnama' under section 4 (a) and 2 (r) of the Rajasthan Land Reforms and Resumptinn of Jagirs Act, 1952 is not a tribute. *Hukammana* which a jagirdar has to pay to the Government under section 190 (1) of the Marwar Land Revenue Act, 1949, upon recognition being accorded to his succession to the jagir is not a tribute within the meaning of section 2 (r) of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 and the obligation of the Jagirdar to pay the same to the Government does not cease under section 4 (a) of the Rajasthan Act, 1952. The definition of tribute in section 2(r) of the Act is inclusive and refer to recurring payments which could be said to be attributable to particular years and not to the type of ad-hoc payments of which 'hukamnama' and patta fees are example : *Bhadur Singh v. State of Rajasthan*, A.I.R. 1961 S.C. 1338.

310. Trial

For the meaning of the expression see: *P. Jain v. Gran Chand*, A. I. R. 1959 S. C. 839.

311. Tried.

For the meaning of this word see : *State of Bihar, v. Ram Naresh*, A.I.R. 1957 S.C. 521 and *Harish Chander v. Triloki Nath*, A. I. R. 1957 S. C. 444.

312. Upto not more than

The words 'upto not more than' are used in Madras Police Subordinate Service Rules. The words appear in Rule 3 of the above rules which deal with promotion and method of appointment. The method of appointment to the category of sub-inspector was to be by promotion from Head Constables "upto not more than" 30 per cent of the cadre and by direct recruitment for which no proportion was fixed.

These words were interpreted to mean as fixing the maximum percentage of rank promotees in the category, leaving it to the appointing authorities to adopt any percentage below that figure. *State of Andhra v. Venkatappayya*, A.I.R. 1965 S.C. 779.

313. Vest

The words vested in court as used in section 108 of the Government of India Act, 1915 cannot be read as meaning now vested in the court. It is a well known rule of construction that when a power is conferred by a statute that power may be exercised from time to time when occasion arises unless a contrary intention appears. The purpose of the reference to Section 108, Government of India Act, 1915 in clause 15 Letter Patent is to incorporate that power in the charter it-self, and not to make it moribund at that stage and make it rigid and inflexible : *N S. Thread and co v. James*

Chadwick and Bros A I R 1953 S C 357

314 While purporting to act as public servant
For the meaning of this word see *Sunil Kumar v State of Bengal*
A I R 1965 S C 706

315 Wilfully
For the meaning of the expression see *Om Parkash v State of U P*
A I R 1957 S C 458

MAXIMS

316 *Actio personalis moritur cum persona*
Where the appeal is against sentence of fine, the appeal may be permitted to be continued by the legal representatives of the accused. Such appeals do not abate on the death of accused persons. But where the sentence is not of fine but of imprisonment the appeal abates as such an appeal becomes infructuous. The fact that the accused was a government servant and was under suspension during the trial and the fact that if the conviction and sentence were set aside his estate would be entitled to receive full pay for the period of suspension cannot be said to effect his estate because the setting aside of the sentence would not automatically entitle the legal representatives to his salary. *B Gajapathi Rao v State of Andhra Pradesh* A I R 1964 S C 1645

A suit for partition brought on behalf of minor co-partener in a joint Mitakshra family does not abate on the death of the minor and can be continued by his legal representatives. *Pedasubhaya v Akhanna* A I R 1958 S C 1043

317 *Falsus in uno falsus in omnibus*
The maxim *falsus in uno falsus in omnibus* means false in one thing false in every thing. The Supreme Court in the case observed that this is neither a sound rule of law nor a rule of practice. There is hardly any witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is the duty of the Court to scrutinise the evidence carefully and in terms of the felicitous metaphor, separate the grain from the chaff. The Court cannot disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. *Ugar Akar v State of Bihar*, A I R 1965 S C 277

This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All this the maxim means is that the testimony may be disregarded but not that it must always be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances. *Nisar Ali v State of U P* A I R 1957 S C 366

318 *Nemo dat et esse iudex in causa propria Sua*

In dealing with cases of bias attributed to members constituting tribunals it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest however small it may be in a subject matter of the proceedings would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead bias is suggested it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or

the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. The principal 'nemo debet esse iudex in causa propria sua, precludes a justice who is interested in the subject of a dispute from acting there in *Manak Lal v. Prem Chand*, A.I.R. 1957 S.C. 425.

319. *Commodum ex injuria sua nemo habere debet*

The meaning of this maxim was discussed in *Mrutunjay Pani v. Narmada Bala*, A.I.R. 1961 S.C. 1353. This maxim means that a person cannot be allowed to take advantage of his own wrongs. In other words it means that convenience cannot accrue to a party from his own wrongs. Thus where an obligation is placed on a mortgagee and he purchases the property for himself, he stands in a fiduciary relationship in respect of the property so purchased for the benefit of the owner of the property. A trustee cannot be allowed to make profits out of the trust.

320. *Contemporanea expositio.*

The above maxim as laid down by Coke is good while construing ancient statutes but cannot be made use while interpreting comparative modern statutes. The rule of interpretation which should be applied to a statute whether ancient or modern is to ascertain the true intention of the legislature. However, it would be wrong and inappropriate to attach wide meaning to the word used by the legislature in a law made in remote ages when society was static : *Raju Ram v. State of Bihar*, A.I.R. 1964 S.C. 828, *Senior Electric Inspector v. Laxmi Narain Chopra*, A. I. R. 1962 S.C. 159.

321. *In pari delicto.*

The maxim must not be understood as meaning that where a transaction is vitiated by illegality the person left in possession of goods after its completion is always and of necessity entitled to keep them. The true meaning of the maxim is that where circumstances are such that the court will refuse to assist either party, the consequences must in fact, follow that the party in possession will not be disturbed : *Waram Shrinivas v. R B. & Co.* A.I.R. 1959 S.C. 689.

Where the parties do not show that there was any conspiracy to defraud a third person, this maxim will not apply. Where the cases of the appellant and the respondents were poles apart it was held that the appellant and respondents were not in *pari delicto* : *Kedar Nath v. Prahlad Rai*, A.I.R. 1960 S.C. 213.

322. *Ubi Remedium ibi jus.*

Whenever there is a right there should also be an action for its enforcement. A right pertains to substantive law and the remedy to procedural law which means that where a right is provided by a statute, a remedy, though not expressly provided for may necessarily be implied. The converse that suspension of the remedy cannot abrogate the right is however not true and cannot be invoked in modern times: *Makhan Singh v. State of Punjab*, A. I. R. 1964 S. C. 381.

323. *Generalia specialibus non derogant.*

For the meaning and scope of this maxim see *Palna Improvement Trust v. Lakshmi Devi*, A. I. R. 1963 S. C. 1077.

324 *Utres magis valeat quam pereat*

This maxim means that it is better for a thing to have effect than to be made void. A Construction which will defeat the object of a statute should be avoided. *I T Commr v Teja Singh* A. I R 1959 SC 352

325 *Actus curiae neminem gravabit*

It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to the court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly it is incumbent on Court if it does not leave the litigant to his own devices to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease is at last shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Court should harm a litigant and it is the bounden duty of Court to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim *Actus curiae neminem gravabit* *State of Gujarat v Jagambhai* A I R 1968 SC 1631

326 *Salus populi est supereme lex*

This maxim means that regard for public welfare is the highest law. This is the basis of the provisions contained in section 123 of the Evidence Act 1872. This section which deals with privilege proceeds on the basis of theory that if the production of the document in question would cause injury to public interest and private interest and where a conflict arises between public and private interest the latter must yield to the former. The courts however should take care and see that interests other than the interest of the public do not masquerade in the garb of public interest and take undue advantage of the provisions of section 123 of Evidence Act, 1872. *State of Punjab v S S Singh*, A I R 1961 SC 493

CHAPTER II

P R E A M B L E

SYNOPSIS

- 327. General
- 328. We the People of India
- 329. Sovereign
- 330. Democratic
- 331. Republic
- 332. Fraternity
- 333. Justice
- 334. Social Justice
- 335. Economic Justice
- 336. Political Justice.
- 337. Liberty.

327. General.

The preamble is not the source of any substantive power conferred on the Government. It is a general principle about construction of statutes that when words are clear, their meaning cannot be cut down. See in this connection the discussion in paras 53 to 59 of this book. The Supreme Court in the *Gopalan's case*, A.I.R. 1950 S.C. 27 ; 1950 S.C.R. 88 observed that in construing part III of the Constitution the high purpose and spirit of the preamble as well as constitutional significance of the declaration of Fundamental Rights should be kept in mind. See also *N. S. Mirajkar v. State of Maharashtra*, A. I. R. 1967 S. C. 1 where the Supreme Court while interpreting the preamble and other provisions of the Constitution observed that the Court should avoid *obiter* observations and discussion of problems not involved in the proceedings.

328. We the People of India.

The Indian Constitution, has not been directly voted on by the People of the country but it is evident from the preamble that framers of the Constitution attached great importance to the sovereignty of the People and they thought it proper to promulgate the Constitution in the name of the People. Though the Constitution was made by men who were not representative of the Nation in the real sense of the word and though it has not been put to vote, it professes that it is based on the consent of the People. *Even the American Constitution professes to be established by the People of the United States though it owes its origin to an agreement between the members of federating States.

The observations made by the Supreme Court of India in *Union of*

*See *McCulloch case* (1819) 4 wh. 316.

India v Madan Gopal 1954 S C R 542 in this connection are note worthy and are reproduced

Our Constitution as appears from the preamble derives its authority from the People of India. It was open to the People to confer on the legislatures established by Constitution which they framed through their representatives power to make laws having operation in relation to period prior to the commencement of the Constitution. See also *State of Gujarat v Badruddin Mithibaswala* A I R 1961 S C 54

329 Sovereign

Sovereign power is that power which is absolute and uncontrolled and in the words of Cooley "A State is sovereign when there resides within itself a supreme and absolute power acknowledging no superior." A detailed survey on the topic of sovereignty is more a realm of political science than of this book but suffice it is to say that sovereignty has two aspects in the modern set up (i) external and (ii) internal. So far as the external aspect is concerned it is more a subject of International law and it implies the independence of the State. The internal sovereignty implies that there is no other body which is superior to the power which calls itself sovereign. Viewed in this context it means the power to compel obedience and punish for disobedience.

The theory of divided sovereignty which has been developed in America is not applicable to the Indian set up. **State of West Bengal v Union of India* A I R, 1963 S C 1241

330 Democratic

Democracy when used in a comprehensive term means not only political conditions of a State but also represents its social and economic condition. This democratic set up can be of two types (i) Direct and (ii) Indirect or representative. In direct democracy the legal and political sovereignty rests in the People as is the case in Switzerland. In the indirect system of democracy, it is the representative of the People who exercise the right of legal as well as political sovereignty. The electorates choose their representatives who carry on the Government. It is for this reason that this type of democracy is called representative democracy.

In some Constitutions both elements of direct and indirect democracy can be found. In France though most of the work is carried on by the representatives elected by the People but sometimes a constitutional amendment is put to the People's vote known as referendum. This is purely an element of direct democracy.

In the Indian Constitution we have adopted indirect or representative system of democracy. All the adults above the age of 21 have a right to vote and in this respect the Indian Constitution has gone far ahead of the American Constitution as no restrictions are imposed on this right. In America there are restrictions on the basis of property or income tax but this is not the case in India. There is no legal or political sovereignty vested

*In the United States the Judicial view is that the sovereignty is divided between the Union and the States each being sovereign as regards the subjects committed to it by the Constitution. *Chisholm v Georgia* (1792) 2 Dall 435 *Meculloch v Maryland* 1819 4 Wah 316 *Collector v Day*, 1870 11 wall 113

ted in people not even the right of referendum beyond the right to choose their representatives. *Katra Education Society*, A.I.R. 1966 S.C. 1307 at 1311.

331. Republic*

The word "republic" as understood by common man is a system which is opposed to "Monarchy" and in its political conception it can be traced back to the days of French Revolution of 1789. Leacock calls it a Government under which head of the executive is chosen by the People and according to *Jellinck* it is Government by a collegial organisation and not by single person.

In another sense this term represents the exercise of the power not by one man but by a body of people who do not hold this power as a proprietary right.

In our Constitution both the elements mentioned above are present. There is a President who heads the executive and who is elected as opposed to hereditary monarchy. At the same time all the people above the age of 21 have the right to vote and elect their representative to carry on the Government.

332 "Fraternity".

The concept of fraternity embodies the noble and humane principle that "All the human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". It is this concept of brotherhood of man which is contained in our Constitution and is given practical shape by abolishing titles and untouchability and many other social evils which swayed the social arena of Indian society. See: *Buckingham and Carnatic Co. v. Venkatesh*, A.I.R. 1964 S.C. 1282.

333. Justice.

Justice is the harmonious blending of selfish nature of man and the good of the society. The attainment of collective good as distinguished from individual good is the main aim of rendering justice.

The Indian Constitution purports to give economic, political and social justice to the people at large. If the people are not given all these things in equal share according to their needs and ability democracy can be rendered to a farce.

334. Social Justice.

Social Justice has been attained in the Indian Constitution by abolition of all sorts of discrimination which originates from wealth, race, caste, religion or title. It is these factors which tend to increase exploitation of one class by another. By giving social justice in the shape of various articles this has been avoided. Social justice tends to harmonise the rival claims and interests of different classes in society. It is only by giving social justice to masses that we can really fulfil the dream of welfare State:

*The American decision throws very little light on the meaning of the term Republic because according to the American Supreme Court it is more of a political question to be determined by the Congress and should not be made a justiciable question. But still from observation made this much can be gathered that it means "that the Supreme power resides in the body of the People" *Chisholm v. Gregoria* 1762 2 Dall 419, *Pacific States T. & T. Co. v. Oregon* (1912) 223 U. S. 118, *Ohio v. Akron Metropolitan Park District* (1930) 281 U. S. 74.

Crown Aluminium Work v Workmen, A. I. R. 1958 S. C. 30, *Muir Mills v. Surti Mills Union* 1955 1 S. C. R. 991; *Express Newspaper v. Union of India* A. I. R. 1958 S. C. 578 *R. S. Swamiji v. State of Mysore*, A. I. R. 1966 S. C. 1172 at 1175.

335. Economic Justice.

Economic Justice mean that every man will get just reward for his labour according to his ability irrespective of his colour, caste, creed or other social position. It also means that people are not to be discriminated on account of economic condition. *Express newspaper v. Union of India* A. I. R. 1958 S. C. 578

336. Political Justice.

Political Justice means the absence of discrimination which has been secured by giving right to vote to all the citizen of India above the age of 21 irrespective of their social status in society.

337. Liberty.

Liberty as under stood in a positive prespective means the bundle of rights essential for development and perfection of human abilities and is found in the shape of freedom of speech and expression and other right contained in the Constitution. (See the chapter on Liberty)

CHAPTER III

INDIAN TERRITORY

SYNOPSIS

338. Amendment in Article 1 and its effect.
339. Union of State.
340. Federal Characteristics.
341. "Territory".
342. "Acquired Territory".
343. Territory if part of India or not law to be determined.
344. Succession of States.
345. Assimilation of acquired territories.
346. Creation etc. of new States.
347. Rights of persons of acquired territory.
348. Cession of national territory should be by legislative action.
349. Territory of India.
350. Territories as may be acquired-Opinion of executive binding on Courts.
351. Power to cede territory is not subject to Preamble.
352. Power to amend Constitution include power to cede national territory.
353. Article 1 (3) (c) does not confer power to acquire foreign territories.
354. Scope of Articles 2 and 3.
355. Requirements of Article 3.
356. Scope, applicability and effect of Articles 3 and 4.
357. State includes Union Territory (Article 3).

338. Amendment in Article 1 and its effect.

This article has been subjected to an amendment *vide* Constitution (Seventh amendment) Act 1956. This amendment came into operation on 1st of November, 1956.

Before the Amendment of 1956 there were 27 States of different categories which constituted the Union. There were three main categories A, B & C and in addition there were territories which were indicated under part D of the First Schedule. Thus there were four categories in all.

The Constitution (Seventh Amendment) Act of 1956 reduced these categories into two only. Instead of A, B and C States there are only one type of States and their number stood at 14. Subsequently however with the bifurcation of Bombay into Maharashtra and Gujarat and with the

creation of Nagaland the number of these States has increased to 16 States which fell under part D have been brought under the head 'Union territories.' With the creation of one more State namely Haryana, the number of states now is 17 and that of Union territories 10

339 Union of States.

The term has been used to denote that the various States which have combined to form the Indian federation is not a result of agreement by the various uniting States and further that the various units have no right to secede from it

The Indian federal system is of a peculiar type and contains both unitary as well as federal characteristic. For federal nature of the Constitution see *In re Reference by President under Article 143*, A. I. R. 1965 S. C. 745.

340 Federal characteristics of Indian Constitution

In England Parliament is sovereign. In the words of Dicey* the three distinguishing features of the Parliamentary sovereignty are that the Parliament has the right to make or unmake any law whatever, that no person or body is recognised by law of England as having a right to override or set aside the legislation of Parliament and that the right or power of Parliament extends to every part of the Queen's dominions.

On the other hand, the essential characteristic of federation is the distribution of executive, legislative, and judicial authority among bodies which are co-ordinate with and independent of each other. The supremacy of the Constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing the delicate balance of power which satisfies the particular requirements of States which are desirous of union but not prepared to merge their individuality in a unity. The supremacy of Constitution is protected by the authority of an independent judicial body to act as the interpreter of the scheme of the distribution of powers. Nor is any change possible in the Constitution by the ordinary process of federal or State legislation. These dominant factors represent the Indian federal structure which are missing in England. *In re Article 143*, A. I. R. 1965 S. C. 745

341 "Territory"

In the realm of International Law the term territory is not the same thing as represented by geographical area but includes the whole area whether of land or water, together with such inhabited or uninhabited lands as are considered to have attached on the ascertained territory through occupation or accretion.

The attendant area includes territorial waters and the air space.

The question whether a particular territory is a part of the State or not can be ascertained from the political department of the Government and the decision of the Government on the matter is always final: *Masthan Singh v. Chief Commissioner*, A. I. R. 1962 S. C. 797.

342 "Acquired Territory"

The territory may be acquired validly, by a State may be means of (i) cession (ii) occupation (iii) prescription (iv) accretion (v) conquest and

*See the Law of the Constitution by A. V. Dicey p. XXXIV and LXXVII.

(vi) subjugation.

The word acquire as used in Article 1 (3) (c) of the Constitution should be understood in the context in which it is used in Public International law. If there is any public notification, assertion or declaration by which the Government of India declares a territory to be part of India, the court would be bound to treat that territory as acquired territory. But if the intention is either expressly or impliedly to the contrary, the court may not treat a territory as acquired. Where the administration of a territory is being carried on under the powers vested by virtue of the provisions of the Foreign Jurisdiction Act, 1947, it would prima-facie show that the territory in question has not been acquired but still continues to be outside the territory of India: *Masthan Singh v. Chief Commissioner*, A. I. R. 1963 S. C. 533.

343. Territory if part of India or not, how to be determined.

Where there is doubt as to whether a territory is part of India or not, the court may adopt two alternatives. The one alternative which the court may adopt is to determine the question itself by referring to the materials placed before it. This material may be in the shape of various agreements executed between various governments. The other alternative is to refer the question to the Government of India and ask them to state whether a particular territory has been acquired or not. In this case the court adopted the second alternative and referred the question to the Government of India: *Masthan Singh v. Chief Commissioner*, A. I. R. 1963 S. C. 513. The opinion given was considered binding. See, *Masthan Singh v. Chief Commissioner*, A. I. R. 1962 S. C. 803.

344. Succession of States.

State succession takes place either in law or in fact. It takes place in law when there is a judicial substitution of one State for another. It takes place in fact when there is, (a) annexation or (b) cession or (c) fusion of one State with another or (d) entry into a federal union or (e) partition or (f) separation.

When the Republic of India came into existence, there was no succession in fact because none of these events took place. Though the people of India gave themselves a Constitution, there was no State succession in so far as the people of former Indian States were concerned. For them the State succession was over sometime before. A succession of International persons occurs when one or more International persons take the place of another International person in consequence of certain changes in the latter's position: *State of Gujarat v. Vora Fiddali*, A.I.R. 1964 S.C. 1043.

345. Assimilation of acquired Territories.

Under Article 1 power is given to assimilate and absorb territories which have been acquired. No power is needed to acquire territory because every sovereign power has inherent power to acquire it. The power given by article is not the power to acquire territory but the power given to merge it in an existing State or in the Union or to make a new State: *In re Berubari Union* A.I.R., 1960 S.C. 845.

346. Creation etc. of new States.

Article 3 gives five kinds of powers so far as creation of new States and alteration of areas etc. are concerned. This can be done by a law passed by the Parliament after fulfilling the necessary conditions. This cannot be

done by an Executive act. The fact that change in territories is necessary in view of some treaty will not justify executive action and a law must be passed. *In re Berubari Union* A I R 1960 S C 845 when two States are to be united into one the union regarding only some matters is not legal. The union must be complete. *H C Sen Gupta v The Speaker* 1956 C W N 555. Art 3 does not warrant handing over of some territory to a foreign power, although there may be some treaty regarding this. *In re Berubari Union*, A I R 1960 S C 845.

347 Rights of persons of acquired territory

When a territory is acquired by a sovereign State for the first time, that is an act of State. It is immaterial whether the acquisition is brought about by conquest or by cession or by occupation or by any other mode. The subjects of the former State can enforce only those rights which the new sovereign recognises. The rights of the subjects of the former State and their enforceability in the Municipal Court must depend upon the will of the new sovereign. The sovereign is the fountain head of all rights, all laws and all justice within the State. The American view* is to the effect that so far as title to the immovable property is concerned, the change of sovereignty does not effect the title of the erstwhile citizens of the ceding State to their property. A cession of territory is never understood to be cession of the property belonging to its inhabitants. The Supreme Court however found no justification to discard the British** view in favour of American view as regards the jurisdiction of Municipal Courts to enforce rights against succeeding sovereign on a change of sovereignty. The British view is that the inhabitants of the former State can make good only those rights which are duly recognised by new sovereign. *State of Gujarat v Vora Fiddah*, A I R 1964 S C 1043. 1964 6 S C R 461. Where by act of State there is cessation of territory by one State to another the subjects can enforce only those rights which the new sovereign recognises. *Pema Chidar v Union of India*, A I R 1966 S C 442.

Similarly where there is merger of two States the successor State is liable only to honour such contracts as the new State recognises. *Firm Bansidhar v State of Rajasthan* A I R 1967 S C 40.

348 Cession of national territory should be by legislative action

A law relating to Article 378 is competent and necessary to give effect to or implement the agreement between various Governments involving cession of national territory. Parliament may if it so chooses pass a law amending Article 3 of the Constitution so as to cover cases of cession of the territory of India in favour of foreign States. If such a law is passed, the Parliament may be competent to make law under the amended Article 3 to enforce the agreement in question. *In re Berubari Union* A I R 1960 S C 845.

349 Territory of India

The term territory of India is used in various articles of the Constitution of India wherever this phraseology is employed it means the territory of India for the time being as falls within Articles 1 (3). The phrase cannot be given different meaning in different Articles. A territory over which the Govern-

*The American view was expounded by Marshall C J in *United States v Percheman* (1131-34) 7 Pct 51.

**For the British view see the decision of Privy Council in *Vajringih v Secretary of State*, A I R 1924 P C 216.

ment of India exercises *de facto* control cannot be included in the term. *Masthan Sahib v. Chief Commr. Pondicherry*, A.I.R. 1962 S.C. 797.

350. Territories as may be acquired—Opinion of executive binding on Courts.

The question whether a particular territory is within the territory of India or not may be decided after referring the matter to the Executive Government. The opinion of the Government is binding on the court. It is the duty of the court to take Judicial cognizance of the extent of the national territory and if the court itself is unacquainted with the fact whether a particular place is within the national territory, the court is entitled to inform itself of fact by making such enquiry as it deem fit; *N. Masthan Sahib v. Chief Commr, Pondicherry*, A.I.R. 1962 S.C. 803. In this case the court did make a reference to the Government and asked the Government as to whether Pondicherry is a part of India or not. The opinion of the Government was held to be binding on the Court. See *N. Masthan Sahib v. Chief Commr of Pondichery*, A.I.R. 1963 S.C. 533

351. Power to cede territory is not subject to preamble.

One of the important attributes of sovereignty is the power to cede parts of national territory as and when necessary. If such a power is vested by the Constitution in the Parliament or any other body the same cannot be taken away by the Preamble. The declaration made by the people of India in exercise of their sovereign wil in the Preamble to the Constitution is no doubt a key to open the mind of the makers of the Constitution yet preamble is not a part of the Constitution and does not confer any substantive power. The preamble cannot import any limitation on the exercise of what is generally regarded as a necessary and essential attribute of sovereignty: In re. *Berubari*, A.I.R. 1960 S.C. 845

352. Power to amend Constitution include power to cede national territory.

Article 368 of the Constitution confer an express power on the Parliament to amend the Constitution. The power to amend Constitution will inevitably include power to amend Article 1 of the Constitution and that logically would include the power to cede national territory in favour of a foreign State. It would be unreasonable to contend that there is no power in the sovereign State of India to cede its territory and that the power to cede national territory which is an essential attribute of sovereignty is lacking in the case of India: In re. *Berubari*, A.I.R. 1960 S.C. 845..

353. Article 1 (3) (c) does not confer power to acquire foreign territories.

Article 1 (3) (c) does not confer power or authority to acquire territories. Article (1) (3) (c) purports to make a formal provision for absorption and integration of any foreign territory which may be acquired by India by virtue of its inherent power to do so. This provision has found place in the Constitution not in pursuance of any expansionist political philosophy but mainly for providing for the integration and absorption of Indian territories which at the date of the commencement of the Constitution continued to be under the dominion of foreign States. Article (1) (3) (c) does not purport to confer power to acquire foreign territory but merely provides for and recognises automatic or assimilation into the territory of India of territories which may be acquired by India. In re. *Berubari*, A.I.R. 1960 S.C. 845.

354 Scope of Article 2 and 3.

Article 2 provides that Parliament may be law admit into the Union or establish new States on such term and conditions as it thinks fit. This Article shows that foreign territories which after acquisition would become part of India under Article (1) (3) (c) may by law be admitted into the Union under Article 2. After a territory has been acquired, the process of law made under article 2 or 3 may assimilate it either under Article 2 or under Article 3(a) or (b). In re *Berubari*, A I R 1960 S C 845

355 Requirements of Article 3

The proviso of Article 3 lays down two requirements before a law dealing with re organisation of States is passed. One is that a bill is to be introduced only on the recommendation of President of India and secondly it is to be referred to the State concerned which may express its opinion within the period specified. The period can be extended. The expression State as used in Article 3 refer to States as known to first schedule of the Constitution. *Babulal v State of Bombay* A I R 1960 S C 51

356 Scope, applicability and effect of Article 3 and 4

The effect of Article 4 of the Constitution of India is that the laws relating to Article 2 or Article 3 are not to be treated as Constitutional amendments which means that if legislation is competent under Article 3 in respect of the topic it would be unnecessary to invoke Article 368. On the other hand if legislation is not competent under Article 3 Article 368 would inevitably apply.

Prima facie Article 3 may appear to deal with the problems which would arise on the reorganisation of the constituent States of India but that is not the entire scope of Article 3. This article deals with the formation of new States and indicates the modes by which a new States can be formed. In re *Berubari* 1960 S C 845. In this case it was held that this Article does not deal with Union territories, this view was modified in the latter decision reported as *Ram Kishore v Union of India* A I R 1966 S C. 645

357 State includes union Territory (Article 3)

In re *Berubari Union* 1960-3 S C R 250 the Supreme Court was of the opinion that Union territory is not State for the purposes of article 3 of the Constitution. In a latter case reported as *Ram Kishore v Union of India*, A I R 1966 S C 645 Gajendragadkar C J observed that it was an error which had crept into the opinion through inadvertence and held that Union territory is State for the purpose of Article 3 of Constitution of India.

CHAPTER IV

CITIZENSHIP

SYNOPSIS

358. General.
359. Domicile.
360. Domicile-Burden of proof of the change is on the person who alleges it.
361. Person includes natural person.
362. Migrated.
363. Citizen include only natural person-Position of Foreign Companies
364. Citizenship and Nationality.
365. Determination of Nationality.
366. Decision of Foreign Court cannot terminate Indian citizenship.
367. Indian Citizen getting passport from foreign government if losses Indian Citizenship.
368. Central Government to determine the question of termination of citizenship.
369. Court can determine whether a person is Citizen of India or not.
370. Indian citizen cannot be convicted under Foreigners Act, 1946.
371. Indian citizen cannot be subjected to an adverse order under Foreigners Act.
372. Cancellation of Registration of citizenship when can be ordered.
373. Person if a foreigner-Material date.
374. Citizenship of corporation cannot be determined with reference to its members.
375. Article 9 does not deal acquisition of citizenship after 26-1-1950.
376. Migration between March. 1947 and January, 1956.
377. Migration to Pakistan after 1. 1. 1947.

358 General

The inherent right of every Independent nation to determine for itself and according to its own Constitution and laws as to what classes of persons

shall be entitled to citizenship cannot be fettered by any outside consideration. The relevant provisions of the Constitution which deal with the topic of citizenship are contained in its Part II which consists of articles 5 to article 11. The fundamental basis of a man's nationality is his membership of an independent political community and its continuing legal relationship between the sovereign State on the one hand and the citizen on the other.

It has been held in *State Trading Corporation v Commercial Tax Officer*, A I R 1963 S C 1811 that a corporation is not a person within the meaning of Article 5 and other relevant Articles, and that a corporation can not enforce such rights guaranteed by the Constitution which can be enforced only by a citizen of India.

359 Domicile

Two constituent elements are necessary for the existence of domicile. There should be residence of a particular kind and the requisite intention. A person may have no home yet he cannot be without a domicile, although in reality he has got none. Domicile and nationality are two different concepts. There can occur a change of nationality without there being any change in domicile. A person who had no domicile in India at the commencement of the Constitution cannot be said to be a Citizen of India under article 5 although he was born at a place within the Indian Union. A person was born in undivided India but he resided and served in Pakistan at the commencement of the Constitution, from 1947 to 1957. He used to visit India on a Pakistani Passport. Sometimes in 1953, he settled with in Indian Union. His application for registration as Citizen under the Citizenship Act was refused and he was required to leave India under rule 3 of the Foreigners Order 1948. It was held that he was not a citizen of India and that the fact that his family resided in India although a circumstance in his favour was not conclusive on the point as it was not proved that he had not established a home in Pakistan where he was living for a number of years. It was further held that even if an animus to come and settle in India could be ascribed to him the factum of his residence in India was wanting. Thus an Indian domicile could not be ascribed to him. *Central Bank of India v Ram Narain* A I R 1955 S C 36.

360 Domicile Burden of proof of the change is on the person who alleges it

The burden of proving the change of domicile is on the person who contends that he has changed his domicile into an Indian domicile. Such a change can be proved by establishing and showing by the person concerned that he has made up his mind to remain in India permanently.¹ Residence alone is not sufficient evidence to prove acquisition of a new domicile. There should be further proof of the fact that the residence is with the intention to make India a permanent home. All citizens are nationals of a particular State but all nationals may not be citizens of the State. Indian citizen cannot be a national of another State. On the facts of this case it was held that the real object of the person concerned was to avoid botheration of having to apply constantly for extension of the residential permit and not that he had intended to make India his home. *Mohd Raza v State of Bombay*, A I R 1966 S C. 1436.

The law attributes to every person at birth a domicile which is called the domicile of origin. This domicile of birth may be changed and a new domicile called domicile of choice may be acquired. There is however one difference between the domicile of origin and domicile of choice. The domicile

of origin is conferred by operation of law at birth but the latter is acquired by showing or proving an intention which is called *animus manendi*. A legitimate child who is born in a wedlock to a living father gets the domicile of the father and a posthumous child receives the domicile of the mother. But in the case of the domicile of choice any individual who is not under any disability may change his domicile and acquire a new one by the fact of residing in a country other than that of his domicile. For this purpose residence is a mere physical fact and means no more than the personal presence in a particular locality. This physical fact must be accompanied by a state of mind which is known as *animus manendi*. The burden of proving that the domicile of origin has been substituted by that of choice is upon the person who asserts it. *Keeder Panday v. Narain Bihram*, A.I.R. 1966 S.C. 160. Reference in this connection may also be made to the decision of Supreme Court in *Abdul Satar v. State of Gujarat*, A.I.R. 1965

C. 810 where it was held that an accused under section 14 of the Foreigners Act 1946 should be given a chance to prove that he was domiciled in India as the burden of proving this lies upon him. The observation made in this case that Article 9 also deals with the question of citizenship after 26-10-1950 was overruled in *Kulathil v. State of Kerala*, A.I.R. 1966 S.C. 1614.

Two conditions must be fulfilled for existence of domicile. There must be a residence of a particular kind and secondly an intention of a particular kind. A person who had no domicile of India at the commencement of the Constitution cannot be said to be a citizen of India under article 5 simply because he was born at a place within the Indian Union. A person was born in undivided India and resided and served in Pakistan at the commencement of the Constitution. He resided there from 1947. He visited India on a Pakistani passport sometimes. In 1955, he settled within Indian Union. His application for registration as citizen under the Citizenship Act was refused. He was required to leave India under rule 3 of the foreigners order, 1948. It was held that he was not a citizen of India and that his family resided in India although a circumstance in his favour was not conclusive on the point as it was not proved that he had not established a home in East Pakistan where he was living for a number of years. It was further held that even if an *animus* could be ascribed to him to come and settle in India, the *factum* of his residence in India was wanting. Thus an Indian domicile could not be ascribed to him. *Central Bank v. Ram Narain*, 1955 S.C. 36.

361. Person includes natural person.

The definition of the word "person" in S. 2 (i) (f) of the Citizenship Act says that the word "person" in the Act "does not include any Company or association or body of individuals, whether incorporated or not". Hence, all the subsequent provisions of the Act relating to citizenship by birth (S. 3) citizenship by descent (S. 4) citizenship by registration (S. 5) citizenship by naturalisation (S. 6) and citizenship by incorporation of territory (S. 7) have nothing to do with a juristic person : *S.T. Corporation of India v. Commercial Tax Officer*, A.I.R. 1969 S.C. 1811.

362. Migrated.

The word migrated is capable of both a narrower as well as a wider meaning. In its narrower connotation it means going from one place to another with the intention of residing permanently in the latter place. In its wider connotation it means going from one place to another whether or not with the any intention to permanently reside in the latter place. The Supreme

Court observed that the term migrated in reference to the Constitution has been used in a wider sense. The decision given in *Shanno Devi v. Mangal Sain*, A I R 1961 S C. 58 was over ruled. The reason given was that the presence of the non obstante clause in Article 6 and 7 clearly indicated that these articles were intended to deal with abnormal cases arising out of large scale movement of population which occurred after partition. The makers of the Constitution were not keen to bring the concept of domicile in Articles 6 and 7.

The Supreme Court however placed one qualification on the meaning of word 'migrated' given above and that was that the movement should be voluntary and should not be for specific purpose and limited period: *Kulathi v State of Kerala*, A I R 1966 S C 1614

363 Citizen include only natural person—Position of foreign Companies

A company being an artificial person cannot claim the protection of Article 19. The company is not a citizen and therefore has no fundamental right. *Barium Chemical v. Company Law Board* A I R 1967 S C 295. The State Trading Corporation which is company registered under the India Corporation Act 1956 is not a citizen with in the meaning of Article 19 of Constitution and cannot ask for the enforcement of Fundamental rights. *State Trading Corporation v Commercial Tax Officer*, A I R 1963 S C. 1811. In the case of *Sewpura v Collector of Customs*, A I. R 1958 S C. 845, their Lordship of the Supreme Court observed that even if it be presumed that company can be citizen as defined in the Constitution, a foreign company possesses no right of citizenship of this Country and hence no right under Article 19. However the matter is now quite clear as is evident from the two latter decision of the Supreme Court cited above.

Part II of the Constitution when it deals with citizenship refers to natural persons only. This is further made absolutely clear by the Citizenship Act which deals with citizenship after the Constitution came into force and confines it only to natural persons. There can be no Citizen of this country who is neither to be found within the four corners of part II of the Constitution or within the four corners of the Citizenship Act, 1955. The above two provisions are exhaustive on the question of citizenship of this country. Part II dealing with citizens on the date when the Constitution came into force and the Citizenship Act dealing with citizens thereafter. These two provisions are completely exhaustive. The fact that corporations may be nationals of the country for purposes of international law will not make them citizens of this country for purposes of municipal law or the Constitution. The word "citizen" used in Article 19 of the Constitution was not used in a different sense from that in which it was used in Part II of the Constitution, *State Trading Corporation of India v Commercial Tax Officer* (Supra)

364 Citizenship and Nationality.

"Nationality" has reference to the jural relationship which may arise for consideration under international law. On the other hand "citizenship" has reference to the jural relationship which may arise under municipal law. In other words nationality determines the civil rights of a person natural or artificial particularly with reference to international law whereas citizenship is intimately connected with civic rights under municipal law. Hence all citizens are nationals of a particular State but all nationals may not be citizens of the State. In other words Citizens are those persons

who have full political rights as distinguished from nationals who may not enjoy full political rights and are still domiciled in that country : *S. T. Corporation of India v. Commercial Tax Officer*, A. I. R. 1963 S. C. 1811.

365. Determination of Nationality.

Section 8 of the Foreigners Act 1946 is the relevant law applicable for the determination of nationality of person who is recognised as a national of two or more foreign countries or where nationality is not known : *State of A. P. v. Abdul Khedar*, A. I. R. 1961 S. C. 1466.

366. Decision of Foreign Court cannot terminate Indian citizenship.

Whether the Indian Citizenship stands terminated on acquiring foreign pass-port has to be decided by Indian authorities whether executive or judicial. The decision of foreign courts has no relevancy on the issue : *Md. Ayub Khan v. Commr. of Police*, A. I. R. 1965 S. C. 1623. It was also held in this case that the question whether the acquisition of foreign passport is voluntary or not can also not be determined by foreign courts.

367. Indian Citizen getting passport from foreign government if loses Indian Citizenship.

In a case where a person has obtained a passport from the Government of Pakistan for travel to India a procedure prescribed by the relevant Pakistan laws make it clear that application for the passport has to be made by citizen of Pakistan, it has to contain a declaration to that effect and the truth of the declaration has to be established to the satisfaction of the Pakistan officials before a passport is granted. When a passport is obtained under these circumstances as far as Pakistan Government is concerned, there can be no doubt that it would be entitled to claim the applicant as its own citizen. The citizen would be estopped from claiming against the Pakistan Government that the statement made by him about his status was untrue. If a rule made under Citizenship Act of 1955 provides that an Indian citizen obtaining a passport from the Pakistan Government would conclusively prove that that person has voluntarily acquired citizenship of that Government there is nothing illegal about it : *Isher Ahmed v. Union of India*, A. I. R. 1962 S. C. 1052. Such a law cannot be said to be violative of Article 19(1)(e) or as amounting to excessive delegation. *Isher Ahmad v. Union of India* (Supra). Reference in this connection may be made to the case of : *State v. Abdul A.I.R. 1961 S. C. 1466* where it was laid down that when the question whether a Indian citizen has acquired foreign citizenship or not arises and where this question is referred to the Central Government under section 9 (2) of the Citizenship act, the answer of the Central Government would be binding upon the Court.

In a latter decision however the Supreme Court has held that if a person raises a plea that he has not voluntarily acquired foreign citizenship he must be given an opportunity to substantiate the plea : *Md. Ayub Khan v. Commr. of Police*, A. I. R. 1965 S. C. 1623.

368. Central Government to Determine the question of termination of citizenship.

Section 9(2) of the Citizenship Act, 1955 read with Rule 30 of the Citizenship Rules 1956 provide that if any question arises as to whether an Indian citizen has acquired the citizenship of another country or not it

shall be determined by central Government. A magistrate has no jurisdiction to come to the finding on the strength of the passport obtained from Pakistan authorities that an Indian Citizen has acquired Pakistani citizenship. *State of A P v Abdul Khader* A I R 1961 S C 1467

369 Courts can determine whether a person is citizen of India or not

The question whether a person is an Indian Citizen or a foreigner as distinguished from the question whether a person having once been a citizen of India has renounced Indian Citizenship and acquired foreign nationality is one which is within its sole jurisdiction to decide. The courts are competent to go into the question. *State of A P v Abdul Khader* A I R 1961 S C 1467. Where the question involved is whether a person is a Pakistani National or not the courts are not debarred by Section 9 (2) of the Citizenship Act 1955 to decide the question. *Ibrahim v State of Rajasthan* A I R 1965 S C 618. Civil Courts are not prohibited from determining questions concerning nationality of person other than those mentioned in Section 9 (2) of the Citizenship Act. *Akbar Khan v Union of India* 1962 (1) S C R 779.

370 Indian citizen cannot be convicted under Foreigners Act, 1946

There can be no conviction under the Foreigners Act unless it is proved as a fact that the person who is being convicted is a foreigner. An Indian citizen cannot be convicted under Foreigners Act. *State of A P v Abdul Khader* A I R 1961 S C 1467

371 Indian citizen cannot be subjected to an adverse order under Foreigners Act

No adverse order can be passed against an Indian citizen. If an order is passed against a person whereby he is ordered not to remain in India the order cannot be enforced if it is found that the person concerned is not a foreign national. *State of A P v Abdul Khader* A I R 1961 S C 1466

372 Cancellation of registration of citizenship when can be ordered

A citizen may be deprived of the citizenship only if it is proved that the registration was obtained by fraud, false representation or concealment of material facts. This power cannot be exercised unless such fraud, false representation or suppression of material facts exist. If a person does not mention the fact that previous applications for registration have been rejected by Government that is a material concealment which may lead to cancellation of certificate. But in this case the court found no such thing and allowed the writ petition and quashed the order of cancellation. *Jauri Shah v D P Jhunjhunwala* A I R 1967 S C 107

373 Person if a foreigner Material date

The material date or time on which a person will become a foreigner is the date when the person commits the offence under Foreigners Act, 1946. There is no excuse for him to say that on an earlier date he was not a foreigner. *Ibrahim v State of Rajasthan*, A I R 1965 S C 619

374 Citizenship of corporation cannot be determined with reference to its members

It is not possible to pierce the veil of incorporation in our country to determine the citizenship of the members and then to give the corporation the benefit of Article 19. If one does pierce the veil and see that the corporation is identical with the Government there would be difficulty in giving relief unless it is held that the State can be its own citizen.

The State Trading Corporation cannot be said to be a citizen either by itself or by taking it as the aggregate of citizens. The nationality of a corporation is a different concept and is not to be confused with citizenship of natural persons. The word "citizen in Article 19(1) sub clauses (f) and (g) refers to a natural person only and the State Trading Corporation is really a department of Government behind the corporate veil.

The State Trading Corporation cannot be regarded as citizen for the purpose of enforcing rights under Articles 19 (1) (f) and (g). *S.T. Corporation of India v Commercial Tax Officer*, A.I.R. 1963 S.C. 1811.

375. Article-9 does not deal with acquisition of citizenship after 26-1-1950.

Article 9 of the Constitution does not make use of the word migration. This Article deal only with voluntary acquisition of citizenship of a foreign State before the Constitution came into force. Cases of voluntary acquisition of foreign citizenship after the commencement of the Constitution have to be dealt with by the Government of India under the Citizenship Act 1955 : *Kulathil v State of Kerala*, A. I. R. 1966 S. C. 1614. In this case it was stated that the observation made in *Abdul Satar Haji v. State of Gujarat*, A. I. R. 1965 S.C. 820, that Article 9(2) also deals with citizenship after the coming into force of Constitution were due to inadvertance.

376. Migration between March 1947 and January, 1950.

A person shall not be deemed to be a citizen of India who had after the first day of march, 1947 migrated from the territory of India to the territory of Pakistan. It is true that migration after January 26, 1950 would be migration after the first day of march, 1947 but a person who has been marked migrated after January 26, 1950 cannot fall within the Article 7 because the requirement of the clause is that he must have migrated at the date when the Constitution came into force. Article 7 refers to migration which has taken place between first day of March, 1947 and 26th day of January, 1950. Citizenship of a person who migrates after 26 January, 1950, would be determined in accordance with the provisions of citizenship Act. An earlier decision in: *Aker Ahmad v. Union of India* A. I. R 1962 S. C. 1052 was relied on: *State of M. P v. Peer Mohammed*, A.I.R. 1963 S.C. 642.

Whether a person has lost Indian Citizenship or not or whether person has migrated to Pakistan or not is a question of fact and the Courts have jurisdiction to determine this question.

377. Migration to Pakistan after 1.1. 1947.

Where the wife of a Muslim migrated from India to Pakistan after the 1st of January, 1947, it was held that the case was covered by Article 7 and that the proviso to this Article did not apply to the case of an unauthorised issue of a permit which was invalid and was properly cancelled. On the other hand if she could prove that she went to Pakistan only for a temporary purpose, she would safely be called an evacuee.

Departure from India to Pakistan and subsequent return on a temporary permit representing him self to be a Pakistani National can only mean that the person went to Pakistan only for a temporary purpose. *State of Bihar v. Kumar Amar Singh*, (1955) 1 S. C. R. 1259, A. I. R. 1955 S. C. 282.

Where a person continued to be in India till July, 1950, prima facie by virtue of Article 5 read with Article 7, he was a Citizen of India on the

date of the Constitution and continued to be so after the Constitution unless it can be shown that under this Article he voluntarily acquired the Citizenship of a foreign State. Prima facie mere migration to Pakistan is not enough to show that he had lost Indian Citizenship. *M. L. Ahmed v. State of Bombay*, A.I.R. 1957 S.C. 857.

CHAPTER V

LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS

SYNOPSIS

- 378. General.
- 379. Fundamental Rights under the English Constitution.
- 380. Fundamental Rights are a guarantee against State action.
- 381. State if include Judiciary.
- 382. State includes Legislature.
- 383. State includes Income-tax Department.
- 384. Authority within the territory of India.
- 385. Pondicherry not territory of India.
- 386. Exercise of power to be in consonance with the Constitution.
- 387. The fundamental rights are beyond legislative competence.
- 388. Fundamental right cannot be waived.
- 389. Law repugnant to fundamental rights is void.
- 390. Spirit of the Constitution, irrelevant.
- 391. Infringement of Fundamental Right-Law is void, exception is Article 31.
- 392. Void Law applied to persons not having fundamental rights.
- 393. Void Law can be made good.
- 394. Law cannot be declared void retrospectively.
- 395. Question of constitutionality of law can be raised only by affected persons.
- 396. Against whom fundamental right can be enforced.
- 397. Rights not expressed or declared as fundamental rights cannot be enforced-Spirit of Constitution is irrelevant.
- 398. Directive Principles of State Policy cannot defeat fundamental rights.
- 399. American decisions, when to be followed.
- 400. No power to issue writ against quasi Judicial bodies in Pondicherry before merger.
- 401. Only judiciary can declare the law to be void.

- 402 Law includes Rules and Regulation but not constitutional Amendments
- 403 Bye Law
- 404 Firman of Ruler is law
- 405 Not fiction
- 406 Administrative order cannot have the force of law
- 407 Law if include Constitutional amendments
- 408 Only bad portions of law are to be struck down
- 409 Courts not to look behind the appearance etc of the law
- 410 Presumption is that the act is valid
- 411 Article 13 is not retrospective and will not Apply to pending proceedings
- 412 Law void ab initio cannot be revived
- 413 Statute void for unconstitutionality is dead and cannot be revived
- 414 Right guaranteed by a firm cannot be revived on the coming into force of the Constitution
- 415 Pre-Constitution laws
- 416 Effect of court declaring act to be void
- 417 Clause (1) & (2) of article 13 enacted by way of abundant caution
- 418 Citizen possessing fundamental rights alone can claim relief
- 419 Directive principles cannot abridge power to legislate
- 420 Subjective opinion
- 421 Repeal and expiry of temporary acts
- 422 Retrospective effect
- 423 Validity of law cannot be determined unless properly raised
- 424 Test for determining validity of law
- 425 Discretion of the court to examine the Constitutionality of the statute
- 426 Person directly affected can challenge the law
- 427 The question must be substantial
- 428 What is Constitutional question
- 429 Constitutionality not to be determined if case can be disposed of otherwise
- 430 The court will decide only those matters which are necessary for the disposal of the case
- 431 The petitioner must have a locus standi
- 432 The question must be raised at a proper stage.
- 433 The question must be justiciable

- 434. - Respect for long standing legislative practice.
- 435. The injury must be to the plaintiff individually.
- 436. Waiver and estoppel.
- 437. The pleading, must be adequate
- 438. The challenge must be specific.
- 439. Doctrine of stare decisis.
- 440. Doctrine of severability or separability.
- 441. The doctrine of gradual and stealthy encroachment
- 442. Motive of the legislature cannot invalidate law.
- 443. Construction upholding validity of law should be adopted
- 444. Equality before law.
- 445. The State shall not make any law-Meaning of.
- 446. Retrospective effect of clause 1 of article 13.
- 447. All the laws in force.
- 448. Meaning of the expression 'law' and laws in force.
- 449. Who can decide the law void.
- 450. Government and State

378. General.

Ever since the enactment of the American Constitution the rights of citizens have found their way in a number of Constitutions. The declaration of fundamental rights in the Indian Constitution is the most elaborate and comprehensive yet framed by any State. The inclusion of a chapter on fundamental rights in the Constitution of India is in accordance with the trend of modern democratic thought, the idea being to preserve that which is an indispensable condition of a free society. The aim of having a declaration of fundamental rights is that certain elementary rights such as, right to life, liberty, freedom of speech, freedom of faith and so on should be regarded as inviolable under all conditions and that the shifting majority in legislatures of the country should not have a free hand in interfering with these fundamental rights: *Gopalan's case* A. I. R. 1950 S. C. 27. Paramountancy of fundamental rights to the State made laws is the only hall mark of fundamental rights.

379. Fundamental Rights under the English Constitution.

There is a fundamental difference between the conception of individual liberty which prevails in American Society and that which prevails in England. In America the fundamental rights were intended to act as a check on the power of the legislature as well as the executive. While in England the maxim of liberty and justice are applied only to safeguard against the tyranny of the executive: *Gopalan's case*, A. I. R. 1950 S. C. 27. According to the British law, relating to the Constitution, a member of the executive cannot interfere with the liberty or property of a British Subject, unless he can support the legality of his action before a court of law and it goes to the credit of the British judiciary that it does not shrink deciding such issues in the face of the executive.

The object behind the inclusion of a the chapter of fundamental rights in Indian Constitution is to establish "a Government of law and not of

men a Governmental system where the tyranny of majority does not oppress the minority. In short the object is to establish Rule of law and it would not be wrong to say that the Indian Constitution in this respect goes much farther than any other Constitution of the world.

380 Fundamental Rights as a guarantee against State action

The rights which are given to the citizens by way of fundamental rights as included in Part III of the Constitution are a guarantee against State action as distinguished from violation of such rights from private parties. *Sanudasan v Central Bank* 1952 S C R 391, *Vidya Verma v Shivram* A I R 1956 S C 108 *Kothummi V State of Madras* A I R 1959 S C 725.

381 State if include Judiciary

In America * Judiciary is very much included in the term 'State' and any judicial act which is not consistent with the fundamental rights is void. But the liberal approach taken in America cannot be followed in India where the scope of challenging a judicial act is very much limited. In *Rati Lal v State of Bombay*, A I R 1953 Bom 242 it was held that the protection of fundamental rights is not available to judicial action but the Supreme Court has not agreed with the view of Bombay High Court and has held that the protection of fundamental rights extends not only to the executive and legislative acts but also to judicial acts. *Budhan v State of Bihar* A I R 1955 S C 191. It was observed that every "willful and purpose full discrimination would be hit by the provisions of Article 14". In a latter case the Supreme Court however said that if a quasi judicial authority acts erroneously it cannot be challenged by taking shelter of Article 14. *Parbhani Co-operative Society v R T A*, A I R 1960 S C 801.

382 State includes legislature

The legislature of a State falls within the definition of State as given in Article 12 of the Constitution. Where in a writ petition under Article 32 of the Constitution of India the prayer was that the State of Madras be asked by a writ of mandamus not to enforce the provisions of Act 32 of 1955 it was held that the writ petition was maintainable as it was not a dispute between private parties. *K K Kochummi v State of Madras*, 1959 (Supp) 2 S C R 316 A I R 1959 S C 725.

383 State includes Income tax department

The income tax department of the Government also falls within the definition of State as given in Article 12 of the Constitution of India. *Bids Supply Co v Union of India*, 1956 S C R 487 A I R 1956 S C 479.

384 Authority within the territory of India

Judicial or quasi judicial authorities functioning in the territories administered by the Government of India but outside the territory of India cannot be said to be authorities under the control of the Government of India within the meaning of Article 12 of the Constitution of India and consequently Article 12 would not apply to such territories. The Supreme Court cannot issue writs to such authorities. The fact that such an authority is appointed by Government of India or is paid out of Indian revenue or that it is under the control of Government of India so far as disciplinary matters are concerned is irrelevant.

The appellate authority under the Motor Vehicle Act, 1939, at a time

* See *Virginia v Rives* (1890) 100 U S 313

when Pondicherry was not part of India would not be under the control of Government of India for the purposes of Article 12 of the Constitution. The Supreme Court cannot issue a writ if the authority concerned refuses to issue a permit. Not only this the Supreme Court cannot quash an order which was passed before Pondicherry was assimilated into Indian territory. Even if it be assumed that there was discrimination no relief could be given. The Chief Commissioner of Pondicherry (the appellate authority under the Motor Vehicle Act) being quasi judicial authority was not under the control of Government of India within the meaning of Article 12 of the Constitution. *K. S. Ramamurthy v. Chief Commissioner Pondicherry*, 1964 1-S. C. R. 656, A. I. R. 1963 S. C. 1464.

385. Pondicherry not territory of India.

The Supreme Court in the case of *Maslan Sahib v. Chief Commissioner Pondicherry* held that as the Executive government was of the opinion that Pondicherry is not part of India, the Court is bound by such an opinion and cannot issue a writ under Article 32.

386. Exercise of power to be in consonance with the Constitution.

The fact that the words "in accordance with the Constitution" are not used in a particular statute is of no consequence. These words are to be read by necessary implication in every provision and every law made by Parliament on any day after the Constitution came into force. Section 3 of the Essential Commodities Act 1955 confers power to provide for regulation, or prohibition of the production, supply and distribution of essential commodities. It is fair and proper to assume that in giving such power Parliament did not intend it to be used in contravention of the Constitution: *Narendra Kumar v. Union of India*, 1960 2-S. C. R. 375 A. I. R. 1960 S. C. 430.

387. The fundamental rights are beyond legislative competence.

The constituent Assembly has deliberately departed from some of the well known British conceptions regarding fundamental rights. India has adopted in its Constitution a formal declaration of fundamental rights which are beyond the competence of any legislature except to the extent and under the Conditions laid down in the Constitution itself. In this respect we have followed the American model and have departed from the British practice. These fundamental rights are a necessary consequence of the declaration made in the preamble of the Constitution: *Behram v. State of Bombay*. A. I. R. 1955 S. C. 123. The Constitution contains not only a formal declaration but it provides also special provisions for the enforcement of these rights. So much so, the right to move the Supreme Court for the enforcement of the fundamental rights is itself a guaranteed fundamental right. This is not the case in the American constitution. *Ramesh Thapar v. State of Madras*. A. I. R. 1950 S. C. 124. These rights have not been inserted into merely for an individual benefit but they have been put there as a matter of policy. *Behram v. State of Bombay*. A. I. R. 1955 S. C. 123. These are rights which are not merely natural rights but are specially conferred by Constitution. *State of Bihar v. Kameshwar Singh*, A. I. R. 1953. S. C. 252 The existence of a fundamental right does not depend upon the fact whether it is being exercised or not. *In re Kerala Education Bill*, A. I. R. 1958. S. C. 956.

388. Fundamental right cannot be waived.

The doctrine of waiver can have no application to the provisions of law

enshrined in part third of the Constitution. It is not open to an accused person to waive or to give out his constitutional rights and get convicted. *Behram v State of Bombay* A I R 1955 S C 123. It is specifically provided in the Constitution that a person can be deprived of his fundamental rights only in accordance with law and the term law in this context refers to a positive legislative enactment. The Indian Constitution has evolved a principle of its own by combining the two elements by striking a balance between the British theory of Parliamentary Supremacy and the American theory of Judicial Supremacy. *Gopalan v State of Madras* A I R 1950 S C 27.

389 Law repugnant to fundamental rights is void

The fundamental rights constitute express constitutional provisions whereby the legislative power of the State is limited and at the same time the temporary will of a majority is controlled by paramount and permanent law settled by the deliberate wisdom of the nation. The characteristic is its paramountcy to ordinary State made law. *Gopalan v State of Madras* A I R 1950 S C 27. These fundamental rights are not mere pious wishes but they are more sacrosanct and they are not liable to be abridged by any legislative or executive order except to the extent provided in the Constitution. *State of Madras v Champakram Ram* A I R 1951 S C 226. Where a piece of legislation is sought to be declared as ultra vires it is the duty of the court to ascertain whether the right claimed is one of the rights guaranteed by the Constitution and secondly whether the right is affected in a manner not guaranteed by the Constitution.

390 Spirit of the Constitution irrelevant

A court has no power to declare a piece of legislation void merely on the ground that it is opposed to the spirit of the Constitution. There must be something express in the Constitution on the basis of which it can be said that the law is repugnant to fundamental rights. *Gopalan v State of Madras* A I R 1950 S C 27. A court cannot declare a law to be void on its own conception of right and wrong. What is to be seen is the effect and impact thereof and the amplitude of fundamental rights. *In re Kerala Education Bill* A I R 1958 S C 906.

391 Infringement of Fundamental Rights Law is void, exception is Article 31

Where a law infringes fundamental right that law is void. But there are certain exceptions to this general rule as contained in Article 31(a) and every attempt should be made to harmonise Article 13 and Article 31 (a) so that the two may co-exist. *K K Kochuni v State of Madras* A I R 1960 S C 1050.

392 Void law applied to persons not having fundamental rights

Laws rendered void by Part III of the Constitution will continue to operate on person who cannot claim fundamental rights e.g. aliens. *Behram v State of Bombay* (1955) 1 S C R 613.

393 Void law can be made good

Law inconsistent with fundamental rights can be amended so as to remove the inconsistency and will render acts done subsequent to amendment valid and binding. *Behram v State of Bombay* (1955) 1 S C R 613.

Similarly by amending the Constitution repugnancy can be removed and the law will become valid from the date prescribed in the amendment. *Bhujaji v State of M P* 1955 (2) S C R 589.

394. Law cannot be declared void retrospectively.

Article 13 has no retrospective application, an order passed before the Constitution cannot be challenged : *Pannulal v. Union of India*, A.I.R. 1951 S.C. 397. The entire Part III including Article 13 is prospective. Existing law can be declared void with effect from the commencement of the Constitution and transaction completed before it cannot be rendered void: *Keshavan v. State of Bombay*, 1951 S.C.R. 228. But void procedure cannot be followed and applied to pending proceedings. However proceeding or part of proceedings completed before the enforcement of Constitution are immune from attack. *Lachhman Das v. State of Bombay*, 1952 S.C.R. 435, A.I.R. 1952 S.C. 12; *Qasim Razvi v. State of Hyderabad*, 1953 S.C.R. 589, A.I.R. 1953 S.C. 156.

395. Question of constitutionality of Law can be raised only by affected persons.

Only that person whose rights are adversely affected by certain piece of legislation can raise the question of the constitutionality of that law. There must be a direct impact on the fundamental rights of the individual concerned: *Charanjilal v. Union of India* A.I.R. 1951 S.C. 41; *Nannu Sukh Dass v. State of U.P.*, A.I.R. 1953 S.C. 284.

396. Against whom fundamental rights can be enforced

It is only against the State and not against private individuals that citizen can seek the enforcement of his fundamental rights: *P.D. Shanmugasani v. Central Bank of India*, A.I.R. 1952 S.C. 59, *Gopalan v. State of Madras* A.I.R. 1950 S.C. 27.

397. Rights not expressed or declared as fundamental rights cannot be enforced-Spirit of Constitution is irrelevant.

There must be violation of fundamental rights expressly mentioned in the Constitution. Merely because the court is of the opinion that the Act of the legislature is against the spirit of the Constitution is no ground for declaring the same as void. A right is fundamental only when it is expressly included in part third of the Constitution: *Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27.

For example Article 265 gives rise to a constitutional right but it cannot be enforced by the Supreme Court under Article 32 because it is not a fundamental right. It is a mere constitutional right. *Ramjilal v. Income Tax Officer*, A.I.R. 1951 S.C. 67.

At the same time, there is well known and an established principle of British jurisprudence which may be treated as a part of Indian Law also that the executive is bound to respect an ordinary legal right of a subject in the same way as a fundamental right.

398. Directive Principles of State Policy cannot defeat fundamental rights.

Where there is a conflict between a fundamental right and the directive Principles of the State Policy, the fundamental right will prevail. The State is free to act in accordance with the Directive Principles set out in part IV of the Constitution but at the same time there should be no infringement of any fundamental right : *State of Madras v. Champakram*, A.I.R. 1951 S.C. S.C. 226.

The Courts should adopt the principle of harmonious construction while determining the scope and ambit of the fundamental right, while keeping in

view the directive principles of the State policy *In re Kerala Education Bill* A I R 1958 S C 956

399 American decisions, when to be followed

The American decisions are not to be followed blindly. But when the fundamental rights given by the Constitution are adopted from the American constitution there is no harm rather it would be legitimate and proper to refer to the decisions of the Supreme Court of the United States of America for they may help in determining the true nature, scope and extent of the right *Express News Papers v Union of India* A I R 1958 S C 578 *State of U P v Doman* A I R 1960 S C 1125, *Vellukunnel v Reserve Bank of India* A I R 1962 S C 137 (see paras 60-64)

400 No power to issue writ against quasi judicial bodies in Pondicherry before merger

Article 12 would not apply to such authorities which are functioning outside the territory of India. Therefore judicial or quasi judicial authorities functioning in the territory administered by the Government of India but outside the territory of India cannot be said to be authorities under the control of the Government of India within the meaning of Article 12. The Supreme Court of India cannot while exercising its power under Article 32 issue a writ against a quasi judicial authority outside the territory of India even though that authority is appointed by the Government of India. Thus the appellate authority under the Motor Vehicle Act acting in Pondicherry when Pondicherry was not within the territory of India would not be under the control of Government of India and the Supreme Court refused to issue a writ against the appellate authority. The Supreme Court cannot issue a writ against such appellate authority passing an order before Pondicherry became a part of India as the Constitution of India is not retrospective. The Court in this case relied on an earlier decision reported as *Mashan Sahib v Chief Commr* A I R 1962 S C 797. This being so it was held by the Supreme Court that the petitioner cannot avail of the protection guaranteed by Article 15 of the Constitution. *K S Ramamurthy v Chief Commissioner, Pondicherry* A I R 1963 S C 461

401 Only judiciary can declare the Law to be void

The Constitution authorises only the judiciary to decide whether a piece of legislation is void or not. *Ram Singh v State of Delhi*, A I R 1951 S C 270

The power of the Court to declare a law as unconstitutional under Article 13 has to be exercised with reference to the provisions of the specific legislation which is impugned. It may be possible that the legislature may enact two different laws but in substance they may form one legislation. If such cases the Court has the power to disregard the form and treat both the laws as one law and strike them down if for instance in their conjunction they result in discrimination, but where there are two different Governments or two different Legislatures then it is not open to the Courts to adopt that above course by reading the two laws in conjunction. *State of M P. v G B Mandawar* A I R 1954 S C 493 1955 S C R 599

402 Law Includes Rule and Regulation but not Constitutional Amendments

Law must be taken to mean rules and regulations made in the exercise of legislative power but the provisions of the Constitution itself or any

subsequent amendment made in the Constitution cannot be attacked on the ground of their repugnance to the provisions of Part III of the Constitution as these amendments are made in the exercise of Constitutional power and they do not come under the term law. So the operation of Part Twelfth of the Constitution which confers on the State the power of alteration cannot be challenged as violative of the fundamental rights. *Shankri Prasad v. Union of India* A. I. R. 1951 S. C. 453. But see *I.C. Golaknath's case* decided by Supreme Court on 26.2.1967 in which it has been held that constitutional amendment cannot abridge fundamental rights.

403. Bye Law.

A Municipal Bye-law which is in contravention of fundamental rights, must be struck down as ultra-vires of the Constitution. Thus a municipal law which places unreasonable restrictions on a person to carry on his business or where a Municipal law passed before the Constitution came in force has the effect of precluding a person from carrying on his trade, within the Municipal area, it must be struck down as unconstitutional. *Rashid Ahmed v. Municipal Board Kasaner*, A. I. R. 1950 S. C. 163.

The bye-laws of a local body must be liberally interpreted and it should be presumed that it will be reasonably administered by those who have been given the powers to administer it.

404 Firman of Ruler is law.

No distinction can be made between an executive order issued by an absolute ruler and a legislative command issued by him. The universal principle in regard to the scope of the powers inherently vesting in sovereignty applies as much to Hindu Monarch as to any other absolute Monarch. Thus a firman issued by the Maharana of Udaipur in 1394 would constitute law and the affairs of the Nathdwara Temple and succession to the office of tilkayat would be governed by Firman issued by the Maharana: *Tilkayat Shri Govind Lal Ji Maharaj v. State of Rajasthan*, A. I. R. 1963 S. C. 1633.

405 Notification.

The constitutionality of a notification is open to the attack of being as unconstitutional. A notification issued under certain statutory provisions has the force of law as it owes its legal efficacy to that statute. It is not essential that the legislature itself should issue such a notification: *State of Bombay v. Balsara* 1951 S. C. R. 689.

Where a notification issued under an Act infringes the fundamental rights, it can be questioned, though the Act under which is issued is valid. *Maunubhia A. Gandhi vs. Union of India*, A. I. R. 1961 S. C. 31 (1961) 1. S. C. R. 191: 1958. S. C. 538.

406 Administrative order cannot have the force of law.

Bihar Education Code has no greater sanction than an administrative order or rule and, therefore, Article 182 of the Bihar Education Code was held not to have the force of law.

Article 182 of the Bihar Education Code could not deprive the Managing Committee of its rights in the property of the school which was under its management. The Code which provides for withdrawal or withholding of recognition in the case of the managing Committee of a school does not carry out the directions of the Board of Secondary education, has no greater sanction than an administrative order or rule. It is not based on statutory

authority which could give it the force of law *Dwarkanath Teuani v State Bihar*, A I R 1959 S C 249

407 Law if include constitutional Amendments

The term law does not include constitutional amendment and Article 13 (2) does not affect amendments made under Article 361 *Shankari Prasad v. Union of India* A I R 1951 S C 548 1951 S C J 772 1952 S C R 89 This view has been over ruled in *I G Golknath's* case decided by Supreme Court on 26-2-1967 in which it has been held that Fundamental rights cannot be modified or abridged

408 Only bad portions of law are to be struck down

Article 13(1) does not necessarily make the whole statute invalid after the coming into force of the Constitution Only those portions which are bad provided these can be separated are to be declared as void *Habib Mohammad v State of Hyderabad* A I R 1953 S C 237 1953 S C R 661

409 Courts not to look behind the appearance etc of the law

While interpreting Article 13 the Courts should not look behind the names forms and appearance to discover the character and nature etc of the legislation but it should examine its substance *Duarkadass v. Sholapur Spinning & Weaving Co Ltd* A I R 1954 S C 119, 1954 S C R 671 1054 S C A 132

The presumption is always in favour of the constitutionality of the enactment *Mahant Motilal v S P Sahi* A I R 1959 S C 942

410 Presumption is that the act is valid

Where the validity of a statute is challenged there is a presumption that the statute is validly enacted The Courts may consider the history matters of common knowledge and proof by affidavit to show reasons for the enactment of a law *Hamdard Dakhana v Union of India* A I R 1960 S C 544 (1960) 2 S C R 671 1960 Cr L J 732

411 Article 13 is not retrospective and will not apply to pending proceedings

Proceedings were started against a person under section 18 (1) of the Indian Press (Emergency Powers) Act 1931 for publishing a pamphlet These proceedings were still pending when the Constitution of India came into force The argument raised on behalf of the publisher was that with the coming into force of Article 19 (1) (a) of the Constitution of India, the relevant provisions of the Press (Emergency Powers) Act became void under Article 13 (1) as they were inconsistent with the fundamental rights It was held that every statute is *prima facie* prospective, unless it is expressly or by necessary implications made to have retrospective operation and this general rule of interpretation should be applied for the purposes of interpreting the Indian Constitution The majority of the Judges were of the opinion that as the fundamental rights became operative only and from the date of the Constitution the question of inconsistency of the existing laws with those rights must necessarily arise on and from the date those rights came into being It was observed that Article 13 (1) cannot have retrospective operation but is wholly prospective Regarding an act done before the commencement of the Constitution in contravention of the provisions of any law, which after the Constitution becomes void the inconsistent law is not wiped out so far as the past act is concerned.

The minority of Judges consisting of Fazal Ali and Mukerjee JJ. held that with regard to inchoate matters which matters were still not determined, when the Constitution came into force and as regards proceedings whether not yet begun or pending at the time of the enforcement of the Constitution, a law which has been declared by the Constitution to be completely ineffectual can no longer be applied: *Keshwan Madhwa Menon v. The State of Bombay* A. I. R. 1951 S. C. 128 1951 S. C. R. 228, *Panna Lal v. Union of India* : 1957 S. C. 397.

412. Law void ab initio cannot be revived.

Power to make laws under Article 245 is subject to provision of Article 13. A law which is void ab initio cannot be revived and the doctrine of eclipse has no application. Where the U. P. Transport Service (Development Act of 1955) passed on 24th April, 1955, was declared to be void, it was held that it cannot be validated by a subsequent constitutional amendment made on 27th of April, 1955: *Deep Chand v. State of U. P.*, A. I. R. 1959 S. C. 648, 1959 2 S. C. R. 8.

413. Statute void for unconstitutionality is dead.

Where the U. P. and tenure (Regulation of transfers) Act was held to be void as violating Article 31 (2), it was held that the doctrine of eclipse was not applicable to post-constitution legislation as the statute void for unconstitutionality is dead and cannot be revived. *Mahinderpal v. State of U. P.*, A. I. R. 1963 S. C. 1019; *Deep Chand v. State of U. P.*, A. I. R. 1954 S. C. 648.

While giving this decision the Supreme Court over-ruled A. I. R. 1957 Allahabad 549).

414. Right guaranteed by a firman cannot be revived on the coming into force of the Constitution.

Where a firman was issued by Nawab of Hyderabad prior to the Constitution, it was held that the right did not revive after the coming of the Constitution and the right to possession of Daragah was destroyed: *Director of Endowment Gt. of Hyd. v. Akaram Ali*, A. I. R. 1956 S. C. 60.

415. Pre-Constitution Laws.

Pre-constitutional law is not effected when the law is declared to be void in consequence of the coming into force of the Constitution: *Syed Qasim Razvi v. State of Hyderabad*, A. I. R. 1953 S. C. 156, *Panna Lal v. Union of India*, A. I. R. 1957 S. C. 397; *Keshwan v. State of Bombay*, A. I. R. 1953 S. C. 128. But there is an exception to the above rule which may be stated as follows:

A citizen is entitled to a fundamental right both as to a substantive as well as procedural laws. So far a liability under substantive law is concerned, such liability is not wiped out if incurred before the Constitution merely because that law has been declared as void. As regards the procedural matters, there are two propositions; if proceedings are already going on then the validity of the proceedings already taken place cannot be called into question on the ground that the procedure followed was against the fundamental rights conferred by the Constitution. But as far as the future stages of the proceedings are concerned, a person is entitled to claim that the proceedings should not be followed as they violate his fundamental right: *Quasim Razvi v. State of Hyderabad*, A. I. R. 1953 S. C. 156; *Haleb Mohd v. State of Hyderabad* A. I. R. 1953 S. C. 287; *Lachman Dass v. State of Bombay* A. I. R. 1952 S. C. 235.

416 Effect of court declaring Act to be void

Once a law has been struck down as unconstitutional it only means that a Court cannot take any notice of it. *Behram Khurshid v Bombay State* A I R 1955 S C 123. The effect of a judgment of a Court declaring an act to be ultra vires is not that the Act never existed or has ceased to exist. The only effect is that so long as the judgment stand, the Courts in the State will decline to recognise the impugned Act. No objection will be available if an amending Act remove the repugnancy. It is wrong to say that the amending Act validates something which was not good.

417 Cl (1) & (2) of Article 13 enacted by way of abundant caution

The inclusion of clause 1 and 2 in the Indian Constitution appears to be a matter of abundant caution. Even if they were not there the Courts have the power to declare enactment void and inoperative if any of the fundamental right was infringed by any fundamental right.

The clauses are not very material for declaring the question as to what extent it is permitted to be abridged by the Constitution itself. *A K Gopalan v State of Madras* A I R 1950 S C 27.

418 Citizen possessing fundamental right can alone claim relief

Relief cannot be claimed under these articles by a citizen not possessing fundamental right. The provisions of article 13 (1) come into play in its relation to the freedom guaranteed in Article 13 (1) of the Constitution. The Article does not declare any law void independently of the existence of the freedom guaranteed by part III. A citizen must be enjoying a fundamental right before he can move the Court to declare a law void. A person not possessing the right cannot claim the relief. *D K Nabhirajab v State of Mysore* A I R. 1952 S C 339. 1952 S C R 744. 1952 S C A 593. 1952 S C J 490. I L R 1953 Mysore 142. 7 D L R S C 334. A Corporation not being a citizen cannot claim Fundamental Rights. *Barium Chemical v Company Law Board* A I R 1967 S C 295. S 1. *Corporation v Commercial Tax officer* A I R 1963 S C 184.

419 Directive Principles cannot abridge power to legislative

The directive principles of State Policy as contained in part IV of the Constitution of India cannot override or abridge the power of the legislature to make laws. Articles 13 (1) only says that the laws which take away or abridge the fundamental rights are not to be enacted as contained in Chapter III of Constitution. A harmonious interpretation has to be placed upon the Constitution and when it is so interpreted it means that State should certainly implement the directive principles but it must do so in such a way that its law do not take away or abridge the fundamental rights. *Mohammad Hanif v State of Bihar* A I R 1958 S C 731. 1958 S C A. 783. 1958 S C A 975.

420 Subjective Opinion

Bombay Land Regulation Act 1948 as amended by Act 2 of 1950 and Act 38 of 1950 was held to be ultra vires. It was said that the words opinion of State Government as used in section 5 of the act signify subjective opinion which is not subject to objective tests. *Sh. Lilabai Bai v State of Bombay* A I R 1957 S C 529.

421 Repeal & expiry of temporary Acts

There is a difference between declaring a law to be void and the effect of the repeal of an Act or expiry of a temporary Act. *Keshav v State,*

A. I. R. 1951 S. C. 128.

422. Retrospective effect:

where certain inconsistency is removed by making a constitutional amendment which gives a retrospective effect in removing the inconsistency, such a law cannot be challenged: *Bhikaji v. State of M. P.*, A. I. R. 1955 S.C. 781.

The word void in Article 13 (1) cannot be held to mean that the void law is obliterated from the statute book. *Behram v. State of Bombay* A. I. R. 1955 S. C. 123.

423. Validity of law cannot be determined unless properly raised.

The Courts are placed under a duty to decide about the validity of legislation. But they can do so only when the question is properly raised before them: *State of Madras v. V. G. Row*, A. I. R. 1952 S. C. 196.

424. Test for determining validity of law.

The test for determining the constitutional validity of any statutory provisions are:—

- (i) whether it is inconsistent with any of the provisions as laid down in Part III of the Constitution, and
- (ii) whether it travels beyond the legislative competence of the legislature which has enacted such a law. Where the law purporting to authorise the imposition of the law is wide enough to cover restrictions, both within and without the limits provided by the Constitution and where it is not possible to separate the two, the whole law is to be struck down. *Romesh Thakur v. State of Madras*, (A.I.R. 1951 S.C. 124 *Chintaman Rao v. State of M.P.*; A.I.R. 1951 S.C. 1951 S.C. 118.
- (iii) the presumption is that an enactment is constitutional; *State of Bombay v. Balsara* A. I. R. 1951 S.C. 318) *Charanjit Lal v. Union of India*, A. I. R. 1951 S. C. 41.
- (iv) But when the enactment on the face of it is found to violate fundamental rights, it must be declared invalid unless those who support it bring it within the purview of the exceptions laid down in the Constitution: *Saghir Ahmed v. State of U.P.* A. I. R. 1954 S. C. 728.
- (v) A law cannot be declared to be void merely because it is found that it is contrary to the spirit of the Constitution; *Gopalan v. State of Madras* A. I. R. 1950 S.C. 27.
- (vi) It is not proper to assume that those who are responsible for administering law will administer it in a manner which is arbitrary caparacions and without taking the feelings of the people into consideration. The proper approach is that those entrusted with the task of administering law will administer it in an honest manner.
- (viii) In deciding the constitutionality of statute, the provisions of the Constitution and not the sentiments or convenience of a party should be taken into consideration.

425. Discretion of the court to examine the constitutnality of the Statute.

There are express provisions in the Constitution of India enabling the

Judiciary to examine the constitutionality of a statute. This power of judicial review consists in seeing whether a particular statute is in conformity with the Constitution of India or not. This is not the case in America. There the Supreme Court has resumed extensive powers of reviewing legislative Acts under cover of the widely interpreted due process clause in the 5th and 14th amendment. Thus the Courts are only performing the constitutional duty when they are reviewing a particular piece of legislation and it is not merely done with a desire to tilt at legislative authority in a crusader's spirit. As far as the fundamental rights are concerned the Supreme Court of India has been assigned the role of a guardian to protect the fundamental rights. *State of Madras v V G Rao* A I R 1952 S C 196 1953 S C R 597

426 Person directly affected can challenge the law

The Courts should not allow friendly parties to contest the validity of a law on an agreed statement of facts. The Courts will not allow judicial review in a case where there is collusion between the parties which has been termed in * United States as a test case or a test suit. This limitation means that the constitutionality of a law should be determined only when there is bonafide litigation. The above doctrine as is applicable in the United States is true so far as Indian Constitution is concerned. In India a friendly or a test suit would be thrown out of the Court. Though there is no direct case giving support to the above view, but the Supreme Court in *Dwarakadas v Sholapur Spinning and Weaving company* (1954) S C R 674 observed that only a person who is directly affected by law can challenge the validity of that law. A person whose own right or interest has not been threatened cannot get a declaration to the effect that a particular law is void.

The above principles have generally been applied in India. It is a well-established principle that Courts will not decide a point only for academic interest. *Central Bank v Workmen* A I R 1960 S C 12. But if the cause of action still subsists after repeal of a law the matter can be decided. In the case of *Commissioner of Hindu Religious Endowment v Lakhmi Nandra* 1954 S C R 1005 where during the pendency of proceedings for judicial review, the statute under attack was repealed by another statute but which gave sanction to the orders and notifications issued under the old act which had given rise to a cause of action the court allowed the petitioners to make proper amendments and seek pronouncement regarding the constitutionality of the new law.

427 The question must be substantial

The doctrine as enunciated in America has been expressly incorporated in the Constitution. For example, Article 132 (1) expressly says that a case must involve a substantial question of law. The word substantial so used has a technical meaning. And a question ceases to be substantial if there is already an authoritative pronouncement on the point so as to leave no room for doubt or for controversy. The Supreme Court of India in a number of cases has refused to hold the question of interpretation of Article 14 of the Constitution to be any longer substantial. *State of J & K v Ganga Singh* A I R 1960 S C 356

428 What is a constitutional question

A question which requires constitutional interpretation also comes under

*See *Chicago and G T R Co v Melmen* (1982) 143 V S 33

the category of substantial question. A constitutional question is one which require the interpretation of the Constitution that is some clause of the organic law itself. **Harivishnu v. Ahmed*, A. I. R. 1955 S. C. 188. A wrong interpretation of an Act, even though some writ may be issued or refused on the basis of such interpretation cannot be called a substantial question of law as to the interpretation of the Constitution.

429. Constitutionality not to be determined if case can be disposed of otherwise.

This American doctrine implies that the Courts can enter upon questions of constitutionality only when there is absolute necessity or the circumstances are such that the interpretation is unavoidable, for the ascertainment of the rights of the parties before the Court. It follows from the above that where it is possible to decide a case without going into the question of constitutionality of the law, then the Court should not do so. This doctrine should be strictly observed.

In *State of Bihar v. Hurdut Mills* (1960) A.I.R. 1960 S.C. 378 it was observed, "in cases where the vires of a statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned provisions are attracted or not. If they are, the constitutional challenge to its validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. It follows, therefore, when the vires of an act is challenged, it must be seen firstly that the provisions which are being called in questions are attracted to the facts of the case, and secondly whether the case can be disposed on some other ground or not. This principle is also applied where the High Courts in exercise of their powers under Article 228 withdraw a case from a subordinate Court. In cases where a suit cannot be disposed of without going into the question of constitutionality, the Court is bound to withdraw the suit at once.

430. The court will decide only those matters which are necessary for the disposal of the case.

This principle implies that the Court will not decide questions beyond what is necessary for the immediate issue. In other words, the Courts are reluctant to set forth a rule of constitutional law broader than which is required for the facts to which it is to be applied. This principle has been very strictly applied so much so that even in cases which may lead to multiplicity of proceedings, it has been strictly adhered to. *Shagir Ahmed v. State of U.P.*; A. I. R. 1955 S.C. 728; *Sheshdhari v. D.M. A. I. R. 1954 S.C. 745*. In *Surajmal v. Vishwanatha* A.I.R. 1954 S.C. 545 a case under the Indian Income-tax Act sub-section (1) and (4) of section of the Act provided for a reference of cases for investigation by a Commission. The provisions were challenged on the ground that they deny equal protection and the Court came to the conclusion that the reference had been made under sub

*Where the question is whether the provisions of an Act have been correctly applied to the facts of a particular case it cannot be said that the question is one which can be called substantial. *Rex v. Abdulaziz* 1949 FLJ 133.

actual levy. *Immunity Co. v. State of Bihar* 1955 2 S.C.R. 603. Where the mere operation of some law is against the fundamental right of a person, and the law by coming into force takes away or abridges his fundamental right, the person concerned can at once come to the Court without waiting for further action by the State which may threaten his fundamental right: *Kochuni v. State of Madras*, A.I.R. 1959 S.C. 725.

432. The question must be raised at a proper stage.

A Constitutional right is liable to be forfeited by the failure to make a timely assertion of the right before a tribunal having jurisdiction to determine it.* The question must be raised at the earliest opportunity. A person cannot be allowed to challenge the constitutionality of a statute under which he is convicted for the first time in appeal. The doctrine above stated is also applicable in India. And it is necessary that it should be properly enforced so that the judicial proceedings may proceed in a disciplinary manner. *Ghouse v. State of Andhra* A. I. R 1957 S. C. 246. But it should not be applied in strict manner which may result in the forfeiture of a fundamental right. The Supreme Court of India has laid down that a party will be allowed to raise a question for the first time which requires an investigation of fact. *Jagan Nath v. Harindar* 1958 S. C. 240. *Rameshwar v. State of Assam* 1954 S. C. R. 126. Similarly, a Court should not interfere unless the person whose right has been affected has exhausted all available remedies available to him. But the Supreme Court of India has been empowered to entertain questions under Article 32 of the Constitution and in these cases it is not necessary for the person to exhaust this remedy before the State High Court under Article 226. *Ramesh Thapar v. State of Mad.* 1950 S. C. R. 594. Not only this where there is an adverse decision under Article 226, a person may apply to the Supreme Court under Article 32 without undergoing the more lengthy process of getting the judgment of the High Court quashed in appeal. But this practice has not been encouraged by the Supreme Court. *A. K. Gopalan v State of U. P.* 1955 S. C. R. 169. *Asvani v. R. Bindra* A. I. R. 1952 S. C. 369.

433. The question must be justiciable.

The Constitution may have many commands which may not be enforceable by Courts because they fall outside the conditions and purposes that circumscribe the judicial action. There must be some litigable controversy before the plaintiff can ask the Court to adjudicate. In some cases which are known as 'political' the Courts have refused to interfere on the ground that they are not justiciable. There are certain provisions which have been declared by the Constitution itself as non-justiciable, such as, the directive Principles of the State Policy as contained in part IV of the Constitution. *State of Bombay v. Balssara* 1951 S. C. R. 682; *Quarshy v. State of Bihar* A. I. R. 1958 S. C. 731. Another provision contained in the Constitution is article 263 which is non-justiciable. This Article relates to the disputes arising out of any provisions of a treaty agreement etc. entered into by any ruler of an Indian State with the Government of the Dominion of India. Even the ruler which is aggrieved by some legislation is not entitled to challenge the constitutionality of any law on the ground of violation of Article 362. *Visheshwar v State of U. P.* 1952 S. C. R. 1020.

See the American decisions on the point : *Yakus v. United States*, 321 U. S. 414 and *Haraudon v. George* (1935) 292 U. S. 447.

*See *Colegrove v. Green* (1946) 328 U. S. 549.

434 Respect for long standing legislative practice

It is a rule of common law that for the interpretation of all statutory instruments due respect should be shown for long standing legislative practice *State of Bombay v United Motors*, A I R 1953 S C, 252

435 The injury must be to the plaintiff individually

The American view is that a person is not entitled to seek a relief or an declaration in the interest of the community as a whole * An injury must be to the person who challenges the constitutionality and not to a third person who is not before the Court. The complainant cannot succeed because some one else may be injured. It does not make any difference even if the person who is injured are of the same occupation or of the same race. It is a clearly established principle that it is the injury to the complainant and not to others which enable the Court to interfere ** A Doctor cannot be allowed to challenge the validity of an Act on the ground that if the statute is passed or is enforced the life of his patients would be endangered. A further corollary which flows from the above principle is that a person is entitled to challenge the constitutionality of a statute only to the extent to which it affects his rights † But it may be seen that the American decisions on this point are not very consistent and it has been held in a case that the above principle is only a rule of practice and the Court can entertain questions in a proper case where the need outweighs the logic behind the rule of practice †† Thus a school was allowed to assert the rights of parents. Similarly a business man was allowed to question the validity of a statute which sought to interfere with the freedom of his person.

In India there is not much law on the subject. But so far as joint Stock Corporations are concerned there are some broad principles which can be followed. It has been held that the Corporation has a legal entity which is different from that of its Share-holders. Hence a Corporation is entitled to challenge the validity of a law depending upon the fact, whether the rights of a Corporation of the Shareholders are affected. *Charanj Lal v Union of India* 1950 S C R 863. The same principle is applicable when an application is filed under article 226 *State of Orissa v Madan Gopal*, 1952 S C R 21.

436 Waiver and Estoppel

As far as waiver is concerned the doctrine of waiver can have no application to the provisions of law enshrined in part third of the Constitution. It is not open to an accused person to waive or to give out his constitutional right and get convicted. *Behram v Khurshid*, A I R 1955 S C 123.

437 The pleading must be adequate

It is not sufficient to throw vague hints that there may be other instances of like nature which are not specifically mentioned in the petition to enable the Party to get a declaration that a particular law is void because the Legislature has acted in an arbitrary manner. *Charanjilal v Union of*

See * *Massachusetts v Melon* (1923) 262 U S 447

** See *Cabe v Atchison* (1914) 235 U S and *Tilston v Ullman* 1943 U S, 44

† *Fleming v Rhodes* (1947) 331 U S 100

†† *Barrows v Jackson* 364 U S, 249 and *Kitchman v Mitchell* (1947) 215 U S 221

India (1950) S. C. R. 869. *Amirunisa v. Mehlab* 1953 S. C. R. 404, *Harnam Singh v. R. T. A.* 1954 S. C. R. 371, *Said Mohammad v. State of Andhra* 1954 S. C. R. 1117. It is for the petitioner to prove that there has been a discrimination between persons situated in like circumstances. Where the discrimination is apparent on the face of the statute it is for the party who supports the alleged discrimination to prove that there is a reasonable basis for the discrimination: *State of Rajasthan v. Manohar* 1954 S. C. R. 996.

438. The challenge must be specific.

The general rule of pleading as contained in the Civil Procedure Code has been applied to the constitutional cases also. It is absolutely essential that the pleading should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial. The defendant should not be put in an embarrassing position: *Chandra Mohan v. State of U. P. A. I. R.* 1966 S. C. 1980.

439. Doctrine of Stare Decisis.

This doctrine in its literal meaning means to stand by the decision. What is meant is that the Courts should, in order to create a certainty in legal proceedings, abide by the decision already given by it, and this doctrine is blindly followed by the House of Lords in England.

The Supreme Court has expressed the view that the Court should be slow to reverse an earlier decision unless there is a change in circumstances and in cases where it is possible to take two opinions it is not very proper to over-rule a previous decision: *Bengal Immunity v. State of Bihar* 1957-2 S. C. R. 603. Recently the Full Court of Supreme Court by a majority judgment reversed the earlier decision and held that the fundamental rights cannot be abridged: *Golak Nath case* decided on 27-2-1967.

440. Doctrine of severability or separability:

In certain cases a question arises that when a part of the statute is unconstitutional whether the whole of the statute is to be declared void or only that part which is unconstitutional should be declared as such. And in these cases the use is made of what is known as doctrine of severability or separability. This doctrine means that if an offending provisions can be separated from that which is constitutional then only that part which is offending is to be declared as void. Article 13 of the Constitution uses the words 'to the extent of such inconsistency be void', which means that when some provisions of law are held to be unconstitutional then only the repugnant provisions of the law in question shall be treated by the Courts as void and not the whole statute: *Qasim Razvi v. State of Hyderabad* (1953) S. C. R. 589. This is, however, subject to the doctrine of severability.

The primary test is whether what remains is so inextricably mixed with the part declared invalid that what remains cannot survive independently: *State of Bihar v. Kameshwar*, A. I. R. 1952 S. C. 252. The question is one of the intention of the legislature and it is to be determined from the terms of the statute itself: *R. M. D. C. v. Union of India*, 1957 S. C. R. 931. Where on a proper examination of the entire matter an assumption can be made that the legislature would have enacted what survives without enacting the part which is ultra vires, the act excluding offending part would

* *London Street Tramways v. L. C. C.* 1898 A. C. 335.

441. The doctrine of gradual and stealthy encroachment.

Though the initial burden of rebutting the presumption of constitutionality of an Act is to be shouldered by a person who challenges it, the Courts are always guided by the principle of caution that it should guard against gradual encroachments. Illegitimate and unconstitutional practices get their first footing by silent approaches and silent deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of the person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right. It is the duty of Court to be watchful for the constitutional right of the citizen and against any stealthy encroachment thereon. *Durkadass v. Sholapur Spinning Co.* 1954 S.C.R. 674.

The Court should always be cautious that the rights of the individual are not being taken away by bits. In *Durkadass v. Sholapur Co.* 1954 S.C.R. 674 it was observed that in order to decide the issues it was necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature has really done. The Court should not be over persuaded by mere appearance of the legislation. In relation to constitutional prohibitions the legislature cannot disobey the prohibition merely by employing indirect method of achieving exactly the same result. Therefore, in all such cases the Court has to look behind the names, forms and appearances to discover the true character and nature of the legislation. In *Gazapati v. State of Orissa*, 1954 S.C.R. 8, it was observed that a transgression may be patent manifest or direct, but it may also be disguised, covert and indirect. It is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncement. Similar observations were made in *State of Bihar v. Kameshwar, A. I. R.* 1955 S.C. 252. This doctrine is also some times called fraud on the Constitution which means that a certain piece of legislation is being used to serve a collateral purpose which is beyond the competence of the legislature.

442. Motive of the legislature cannot invalidate law.

If the legislature is competent to do the things directly, the mere fact that it attempts to do it in an indirect manner or with the improper motive that cannot affect the validity of the Act. The Court is concerned only with the fact whether the legislature has the power to do something and not with whether the legislature is right in its judgment: *Gazapati v. State of Orissa*, 1954 S.C.R. 1.

443. Construction upholding validity of law should be adopted.

Where two possible construction can be put upon a statute the Court should adopt that construction which uphold the validity of the impugned legislation: *Tilkayai Shri Govind Lall Ji Maharaj v. State of Rajasthan*, A.I.R. 1953 S.C. 1938.

444. Equality before law.

A notification dated 1-4-58 issued under the Rajasthan Sales Tax Act is valid. Exemption of betel leaves from sales tax on payment of annual fee does not violate Article 14 and 19 (1) (G) *Ramnarayan's Case*, A.I.R. 1961 S.C. 1325

445 The State shall not make any law.

These words do not mean that the legislature can be prevented by any legal proceedings in a Court of Law from enacting any law. It is not the function of the court or a judge to declare a law as unconstitutional the moment it is promulgated. The Courts are not a supervisory bodies over the legislature *Bhikaji v. State of M P.* A.I.R. 1955 S.C. 781,

446 Retrospective effect of clause 1 of article 13.

The clause (1) of Article 13 of the Constitution is not retrospective and its effect is not to make the inconsistent provision void ab initio *Keshav v. State of Bombay*, A.I.R. 1951 S.C. 128. Similarly the effect of clause one is not to nullify anything that has already been done as a result of particular law having been in force immediately before the commencement of the Constitution *Abdul Khraer v. State* A.I.R. 1958 S.C. 355

If an act which is done before the commencement of the Constitution which act according to law prevalent at that time constitutes an offence it shall not cease to be an offence merely by the coming of the Constitution

447 All the law in force

The expression "all the law in force" as used in section 292 of the Government of India Act 1935 corresponding to Article 372 (1) of the Constitution cover not only statutory laws but also non statutory laws which include even personal laws. A mere executive order would not come under the terms of existing laws or laws in force. Laws in force includes custom and usages *Madhu Bai v. Union of India* A.I.R. 1961 S.C. 21.

448 Meaning of the expression 'law' and laws in force.

See *D P. Joshi v. State of M.P.*, A.I.R. 1955 S.C. 344

449 Who can decide the law void

When both the policy as well as the object of a certain piece of legislation is constitutional, the Courts have no power to question the policy of a legislature. The Court has no power to interpret law on its own conceptions of right and wrong and when a certain piece of legislation howsoever drastic it may be if it does not contravene any fundamental right then the Courts are under a duty to uphold such legislation *Ram Singh v. State of Delhi*, A.I.R. 1951 S.C. 270. *State of M.P. v. G.G. Mandaer*; A.I.R. 1964 S.C. 493

450. Government and State.

The President acting in his official capacity constitutes Government and hence when acting as such he is included in the term "State". The expression "The Government and the Parliament of India" and "The Government and the legislature of each of the States obviously mean the executive and the legislative authority at the Centre and in the several States. *Bidi Supply Co. v. Union of India* A.I.R. 1956 S.C. 479.

CHAPTER VI

EQUALITY BEFORE LAW

SYNOPSIS

- 451 Meaning
- 452 Absolute equality
- 453 Article 14 covers both substantial and procedural law
- 454. Presumption is in favour of constitutionality
- 455 Reasonable classification
- 456. Intelligible differentia and rational relation to the object sought to be achieved
- 457 Basis of classification
- 458. What is reasonable classification
- 459 Classification need not be scientifically perfect and logically complete
- 460 Arbitrary classification
- 461 Section 197 Cr P C is valid
- 462 Territorial discrimination
- 463 Classification based on geographical and historical grounds
- 464 Regional difference may justify classification
- 465 Pending proceedings constitute a class in itself
- 466 Exemption in favour of some body does not constitute discrimination
- 467. Different authorities enforcing different Acts which result in different treatment—Not bad
- 468 Classification based on different localities
- 469 Classification of foreigners
- 470 Possibility of discrimination
- 471 Discrimination should be rational
- 472 Different procedure in different State, no violation
- 473 Territorial classification
- 474 Only one person may constitute a class
- 475 Classification of manufacturers for giving exemptions etc
- 476 Vexatious litigants may constitute a class

477. Lawyers practising on original side in Calcutta constitute a class
478. Odd cases may be treated differently
479. Persons may constitute two classes in the same State and under the same Act
480. Different classes of public servants may be treated differently in the same State
481. Fixation of maximum rent without making distinction
482. Selection of candidates getting less marks in an interview is illegal
483. Condition applicable to all cannot be called discriminatory
484. Gold smiths who work themselves constitute a class
485. Factories of three years standing may constitute a class
486. State may tax only few articles
487. Government to decide whether a civil servant should be proceeded departmentally or otherwise
488. Tea plantations may be treated differently
489. Difference in procedure in settling disputes, no discrimination.
490. Section 85 of Factories Act not discriminatory
491. Trial by section 30 Magistrate is not discriminatory
492. Law authorising appointment of special Magistrates
493. Employees doing same work not entitled to get same pay
494. Temporary Government servant
495. Simple and short procedure for trying certain offences
496. Right to cross examine denied will not render law bad
597. Preventive Detention Amendment Act 1951
498. Barred right of appeal cannot be revived
499. Succession cannot be determined by an Act
500. State can fix minimum of tax
501. Requirement of capitation fee is legal
502. Lawyer contesting municipal Election not to accept brief for or against Municipality—condition is not violative of Article 14
503. Absorbed employees of Municipal Board cannot claim the same treatment as given to those already in government service

504. Same class of property subjected to different tax rates—Law is void
505. Intention of legislature is immaterial
506. Exercise discretion by the State
507. Discretion given to Administrative Tribunal by law cannot be challenged
509. Direction to Income Tax officer
510. Customs can be declared void
511. Construction of Article 14
512. Doctrine of Due process—Value of American decisions
513. Retrospective effect of the Article 14
514. Does principle of equality before law apply to State?
515. Article 14 applies to all persons whether citizens or not
516. Foreign company cannot invoke article 14 if Article 19 is also involved
517. Aliens
518. Who can raise objection
519. Taxation laws.
520. Power of State Government to order trial before Sessions Courts or by Jury.
521. Special courts and special procedure
522. Facility for women student etc.
523. Requirement of licences
524. Fixation of minimum fee for different classes not bad
525. Provision relating to keeping prisoners in isolation
526. Bad and good provisions not separable
527. Arbitrary selection of sub Judges held bad
528. Discrimination should be pleaded and proved—Burden of proof
529. Termination of services without enquiry is discriminatory.
530. Filling of posts after due advertisement—No violation of equal protection of laws.
531. Two provisions in the same act—One more harsh—It will be struck down
532. Rules may fix maximum fee
533. Scheme of annuity deposit is legal
534. Three tier system is legal
535. Interviews may regulate admissions to schools

- 536 Junior civil servant retained and senior removed—
Does not violate Article 14 if removal is the result
of disciplinary proceedings
- 537 Registered dealers may constitute a class
- 538 Temporary deprivation does not violate article 14
- 539 Section 87 (b) of the C P C is not discriminatory
- 540 Statute providing quasi judicial machinery not bad
- 541 Carry forward rule is violative of Article 14
- 542 Rotational system of promotion is not bad
- 543 Reichert value of Ghee may be different in different
regions
- 544 Statutes saved by article 31 not open to attack
- 545 Discrimination must be established by evidence
- 546 Qualification for membership can be imposed
- 547 Special method for the recovery of State dues not
bad
- 548 Special procedure for one person only may not be bad
- 549 Subversive activities
- 550 Foreign exchange regulation
- 551 Section 23 (b) Foreign Exchange Regulation is valid
- 552 Not applying certain provision of criminal proce-
dure etc
- 553 Bihar Panchayat Raj Act
- 554 Rule 63 under Displaced Persons Act
- 555 Exemption of excise duty etc
- 556 Export control order
- 557 Bihar Hindu Religious Trust Act
- 558 Arms Act
- 559 Madras District Board Amendment Act 1957 and
Kerala Act 4 of 1958
- 560 Section 5 (7a) Income Tax Act is valid
- 561 State Monopoly
- 562 Proceedings taken before Constitution
- 563 Proceedings completed before Constitution—Action
can be taken
- 564 Two kinds of commitment proceedings under section
207 and 207A Cr P C held valid.
- 565 Presumption of guilt based on poison etc
- 566 No waiver of fundamental rights
- 567 Right of trial by jury taken away qua one man
only held to be bad
- 568 Working journalists

569. Represented through legal practitioner
570. Classification of unions
571. Slums Areas Act, 1956
572. Prohibition laws
573. Different laws may prevail in different parts
574. Law not applying to the entire State
575. The Orissa Motor Vehicles Act 36 of 1947 and the Orissa Amendment Act No. 1 of 1949
576. Bombay Rents Control Act 1947 etc.
577. Companies Act, Section 237
578. Punjab Public Premises Act

451. Meaning.

Equality before the law means that among equals the law should be equal and should be equally administered and that the like should be treated alike: *Ram Prasad v. State of Punjab*, A. I. R. 1953 S. C. 215; *Lachhman Das v. State of Bombay*, A. I. R. 1952 S. C. 235. The dominant idea being that person should be uniformly treated by law unless there is some rational reason as to why they should be treated differently. Article 14 which is general must be read with other provisions which set out the ambit of fundamental rights. This is the first article in the series which embodies the idea of equality expressed in the preamble. The succeeding articles 15, 16, 17 and 18 enact particular application of the rule laid down in article 14. While both the expressions equal protection of laws and equality before law aim to establish what may be called as equality of legal status for everyone, there is some difference between the two expressions if examined thoroughly. Equality before law is somewhat a negative concept, implying the absence of some special privilege in favour of some individual while the expression equal protection of laws is a positive concept whereby it tries to lay down the principle of equality of treatment in equal circumstances.

452. Absolute Equality.

The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. What is contemplated is similarity of treatment and not identical treatment. The protection of equal laws does not imply that all laws must be uniform. A Legislature which has to take into consideration different problems arising out of a variety of human relations must of as necessity have the power of legislating special laws to attain particular object in view. For the achievement of this purpose it is necessary to classify persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not *prima facie* amount to discrimination: *Satis Ch. and v. Union of India*, A. I. R. 1953 S. C. 250

453. Article 14 covers both substantial and procedural Law.

The equality contemplated by article 14 is to be applied both to the substantive and procedural law: *State of West Bengal v. Anwar Ali*, A. I. R. 1952 S.C. 75; *Express News Paper v. Union of India* A. I. R.

1958 S C 578 *Hanumantha Rao v. State of Andhra Pradesh*, A. I. R. 1957 S C 927 *Budhan v State*, A. I. R. 1955 S C. 191; *Shri Minakashi Mills Ltd Madurai v. A. R. Vishwanatha Shastri*, A. I. R. 1955 S C 13, 1955 (1) S. C R. 787.

454 Presumption is in favour of Constitutionality.

Presumption is in favour of the constitutionality of the statute. U P Prevention of Cow Slaughter Act of 1956 and also corresponding provisions of Bihar and M. P. Act were held not to contravene article 14 *Mohammad Hamid Quraishi v. State of Bihar and U. P.* A I R 1958 S C 731. *Rani Ratna v. State of Orissa*, A I. R. 1964 S C 1195

455 Reasonable Classification

What article 14 prohibits is class legislation. But it does not forbid reasonable classification. The classification, however, should not be arbitrary, it must rest upon some real and substantial distinction having some relationship which is reasonable to the things in respect of which the classification is sought to be made. The classification must have a reasonable relationship with the object or the purposes which are sought to be achieved by the legislation in question. This classification can be based on the basis of geography or other objects or occupation etc. *Sakhawan Ali v. State of Orissa*, A. I. R. 1955 S C 166; *Edward v State of West Bengal*, A. I. R. 1958 S C 596 *M. H. Quareshi v State of Bihar*, A. I. R. 1958 S. C. 731; *Purshotam v B M Desai*, A I. R 1956 S C. 20, *Sashi Mohan v. State of W Bengal*, A. I. R. 1958 S. C. 194. The classification may not be scientifically or logically perfect. Although there is no specific provision in article 14 which may enable the State to impose restrictions on the rights of a person in public interest, but it has been held that such a power is implied in the very nature of the right conferred by this article. The power to make a classification, can be exercised by the administrative bodies which are acting under a particular Act. Merely because a certain classification is not all embracing and leaves some of the categories which stand on the same footing as those covered by it would not render the legislation discriminatory: *Hans Muller v Superintendent* A I R 1955 S. C. 367. It cannot be said that a piece of legislation is bad merely because it selects only a few evils for reform. The State cannot be compelled to extend the application of a particular law to all classes of subjects or territories coming within its jurisdiction. The classification can be made by taking the status of persons into consideration. Thus where legislation is made with regard to corporation only it cannot be said that the principle of equality is violated. Similarly, where different laws are enacted for different groups for example, soldiers, doctors etc. there is no discrimination. *State of Bombay v. F. N. Balsara*, A. I R 1951 S. C 318. Where some inequality is introduced by enactment of a certain statute by one State between the persons living in that State and between those living in other States, it cannot be a ground for declaring such an enactment void. It is immaterial whether the class of persons to whom the law is applied consists of a large or a small group. *Charanjit Lal v Union of India*, A. I. R 1951 S C. 41.

456 Intelligible differentia and rational relation to the object sought to be achieved.

The classification should be reasonable and reasonable classification is that which is founded on intelligible differentia which is based on some rational relation to the object sought to be achieved. Where a law confers unguided and unsettled power it may have to be struck down depending upon the conditions prevalent and also on the changing conditions of society: *Bidi Supply Co. v. Union of India*, A. I. R. 1956 S. C. 379; 1956 S. C. R. 267. Classification should rest upon rational basis regard being had to the object which the legislature has in view. Where a law was passed declaring a pre-constitutional lease in favour of petitioner as null and void, it was held that it is the worst kind of discrimination and the law was declared bad: *Ramparsad v. State of Bihar*, A. I. R. 1953 S. C. 215; 1953 S. C. R. 1129.

457. Basis of classification.

Classification must be founded on intelligible differentia which must have a rational relation to the object sought to be achieved by the statute in question. Classification may be founded on different basis. Thus where under the Madras City Tenants Protection Acts (III) of 1922 as amended by Act XIII of 1960, certain protection given to non-residential tenants was taken away by the amending Act in respect of certain tenants residing in certain Towns, it was held that the amending Act of 1960 is not discriminatory as there existed a reasonable and real difference between non-residential tenants living in different towns: *Swami Motor Transport Pvt. Ltd. v. Srishankra Swamikal*, A. I. R. 1963 S. C. 864.

458. What is reasonable classification :

Classification for legislative purposes is warranted by the Constitution provided the classification is based on some differentia having a reasonable relation to the object and purpose of the law in question: *V. M. Syed Mohammed & Co. v. The State of Andhra*, (1954) S. C. R. 1117; A. I. R. 1954 S. C. 314 and *Budha Choudhry v. State of Bihar* (1955) S. C. R. 1045; A. I. R. 1955 S. C. 191. Classification must be based on intelligible differentia and there must be some connection between the discrimination and the object sought to be achieved. Where the Bombay Public Security Measure Act (6 of 1947), authorised a particular case to be tried by special judge thereby subjecting the accused to special procedure, which led to the curtailment of the rights available to him under ordinary law, it was held that the procedure was bad and the law unconstitutional: *Lachhmandas v. State of Bombay*, A. I. R. 1952 S. C. 235; 1951 S. C. R. 710. The West Bengal Act 10 of 1950 was declared to be ultravires because the special Court was to follow procedure which was less advantageous to the accused. The object of the Act being the necessity of speedy trial was held to be vague and uncertain: *State of W. Bengal v. Anwarali*, A. I. R. 1952 S. C. 75; 1952 S. C. R. 284.

459. Classification need not be scientifically perfect and logically complete.

It is not necessary that the classification made by the legislature should be scientifically complete. Thus where a shortened and simplified procedure was prescribed for special types of offence under Section 4 of the West Bengal Criminal Law Amendment (Special Courts Act) of 1949) it was held that there is no violation of article 14. It is for the administrative authority to select the persons or things in order

Amendment Act I of 1949 which creates distinction on the basis of zone and territory is not hit by article 14 : *Ram Chander v. State*, A. I. R. 1956 S. C. 298.

463. Classification based on geographical and historical grounds.

Where certain inequalities arise on account of historical reasons, it cannot be said that there is violation of article 14. Thus where different Tribal laws came into existence in the State of Andhra Pradesh on account of merger in 1956, it was held that Article 14 was not infringed as the geographical classification was based on historical reasons. The Hyderabad Endowment Regulations 1940 and the Rules framed thereunder were held to be not violative of article 14. An earlier decision in *State of Rajasthan v. Manohar Singh*, A. I. R. 1954 S. C. 297 was distinguished and the Court relied on *Bhaiyalal Shukla v. State of Madhya Pradesh*, 1962 S. C. 981. *Anant Prasad v. State of Andhra Pradesh*, A. I. R. 1963 S. C. 853. Where differentiation arises on account of historical reasons, for example, when by the merger of indhya Pradesh with Madhya Pradesh certain laws were extended to the State of Vindhya Pradesh (as it originally was) it was held that the discrimination resulting from merger could not be challenged : *Bhayalal v. State of Madhya Pradesh*, A. I. R. 1962 S. C. 981. Classification when made on the geographical basis cannot be said to be bad : On the basis of this principles, it was held that Section 6 of the Abducted Persons (Recovery and Restoration Act 1949), was not bad : *State of Punjab v. Ajaib Singh*, A. I. R. 1952 S. C. 10, 1953 S. C. R. 254. A reasonable law founded on a reasonable classification of assessee is valid and if some discrimination arises due to historical reasons, article 14 is not attracted : *Ranjilal v. I. T. Officer* A. I. R. 1951 S. C. ; 1951 S. C. R. 127.

466. Regional difference may justify classification.

Regional difference do not necessarily constitute discrimination and laws may be designed for effective justice in different ways in different parts of India if people are not similarly circumscribed. The backward tracts of State of Nagaland are not found suitable for the application of the Criminal Procedure Code with all its rigour and technicality and to say that they shall be governed by not by technical rules of the Code but by the substance of such rules is not violative of article 14 of the Constitution of India. In a backward tract an accused person may not be able to defend himself meticulously according to the complex Code. The rules for Administration of Justice and Police in Nagahills made in 1906 and revised in 1937 leave the Judge free to mould his proceedings to suit the situation and this would lead to rather less discrimination. The argument that the rules allow much room for discrimination in as much as one officer administering justice may take the spirit of Code in a different prescriptive and the other in a different one was found to devoid of force as such, an action could be set right by Courts of Appeal and Revision : *State of Nagaland v. Ratan Singh*, A. I. R. 1967 S. C. 212.

465. Pending Proceedings constitute a class in itself.

Pending proceeding may be considered as a class it self and the saving clause in Section 4 part C States (Laws Act) cannot be said to

be discriminatory *Shivbahadur Singh v State of M P* A I R 1953 S C 394 1953 S C R 1188

466 Exemption in favour of some body does not constitute discrimination

Where there was certain exemption under clause 4 of Cotton Contract order (1950) in favour of certain association it was held that there is no discrimination *M D Cotton Association v Union of India*, A I R 1954 S C 634 Influx from Pakistan Control Act is not discriminatory *Abraham War v State of Bombay* A I R 1954 S C 229 1954 S C R 933

467 Different authorities enforcing different Acts which result in different treatment—Not bad

Where different Statutes are enforced by different authorities which results in some discrimination it cannot be said that there is violation of article 14. Thus when difference in Dearness Allowance arises between Central and State Government employees because of different rules there is no violation of article 14. *Harishankar Bagla v State of M P* A I R 1954 S C 465 1955 S C R 330 *State of M P v G C Mandhavar* A I R 1954 S C 493 1955 S C R 599 Similarly where discrimination arises out of the choice which a particular person chooses to exercise and not because of the provisions of a statute, there is nothing wrong in it. *Chittor Motor Transport v I T Officer*, A I R 1966 S C 570

468 Classification based on different localities

There is no infringement of the equality clause where by settlement different rates are imposed on different localities. *Kishan Singh v State of Rajasthan* A I R 1955 S C 793 1955 (2) S C R 531 Section 128 (1) of the U P Municipality Act in so far as it authorises the Municipal Board to impose the taxes mentioned there in any part of the municipality is not violative of article 14. The power vested in Municipal Board to select part of the municipality for the purpose of imposing the tax is not arbitrary but is a power which is controlled by the purpose which was intended to be achieved by the Act itself. Different parts of the Municipality may require special treatment in the matter of provisions of amenities and it will be reasonable to impose separate tax in separate areas and localities. The taxing statutes are to be interpreted liberally. Equality clause does not forbid geographical classification on provided the difference between the geographical units has a reasonable relation to the object sought to be achieved. *Copal Narain v State of Uttar Pradesh* A I R 1964 S C 370 *Khandge Sham Bhat v Agricultural Income Tax Officer* A I R 1963 S C 591

469 Classification of foreigners

Where classification of foreigners is made under Section 3 (1) (b) of Preventive Detention Act and Section 3 (2) (c) of the Foreigners Act 1946 there is nothing wrong. *Sakunt Ali v State of Orissa* A I R 1955 S C 367 1955 (1) S C R 1284

470 Possibility of discrimination

Where there is possibility of Government discriminating between persons and persons falling within the group of category of substantial

evaders of income tax for example, as under Section 5 (1) of Travancore Taxation on Income (Investigation commission) Act, then such a law will be declared as invalid: *T. K. Musaliar v. M. V. Pati*, A. I. R. 1956 S. C. 246; 1955 (2) S. C. R. 1169.

471. Discrimination should be rational.

The discretion given by law to a State, as sovereign, should not be arbitrary and it must be based on some rational ground having some relationship with the object sought to be achieved otherwise the law would be declared void as discriminatory: *State of West Bengal v. Anwar Ali*, A. I. R. 1952 S. C. 75; A. I. R. 1954 S. C. 424.

472. Different procedure in different States, no violation.

Where there is difference in procedure in various States there is no violation of Article 14: *Parshotam v. B. L. Desai*, A. I. R. 1956 S. C. 20; 1955 (2) S. C. R. 887. Where a classification was made of working journalists as constituting a separate group, it was held that the classification is valid: *Express Newspaper Ltd. v. Union of India*, A. I. R. 1958 S. C. 578; 1952 S. C. R. 12.

473. Territorial classification.

Where classification of territory was made into dangerously disturbed areas and other areas under the East Punjab Public Safety Act of 1949 and it was provided that the trial of warrant cases was to be held as summons cases, it was held that there is no violation of article 14: *Gopichand v. Delhi Administration*, A. I. R. 1959 S. C. 609.

474. Only one person may constitute a class.

Where the Management of a Company was taken over by the Government under Act 28 of 1950 because there was mismanagement, it was held by majority judgment that the Company engaged in production of essential commodity constituted a class in itself and there is nothing wrong if special legislation applicable to that company alone is made in the interest of community at large: *Charanjit Lal v. Union of India*, A. I. R. 1951 S. C. 41; 1950 S. C. R. 869.

Even one institution can constitute a class by itself. Where an Act provided for transfer of management from the old board to the new one, it was held that the onus of showing that the selection was unreasonable lies on the person attacking the validity: *Board of Trustees, Tibia College v. State of Delhi*, A. I. R. 1962 S. C. 458.

Where there is legislation for single individual the fact that the enactment was inspired by the impending retirement of a particular individual it was said that this cannot be a ground for holding it as discriminatory. In this case by Punjab Act 8 of 1957 the age of retirement was raised to 67 years with reference of all persons holding office, it was said that as the act was of general application there was no violation of Article 14: *A. C. Industries Ltd. v. Workmen*, A. I. R. 1962 S. C. 1100.

The picking of Bakshi Ghulam Mohammad out of the entire cabinet for the purpose of enquiry is not discriminatory or violative of Article 14. The notification under Section 3 of Jammu and Kashmir Inquiry Act of 1962 whereby an Enquiry Commission was appointed to go into the charges of corruption cannot be called as violating equality

before law. It was held that Bakshi Ghulam Mohd forms a class by himself and there is no question of violation of Article 14 of the Constitution. *State of J & K v Bakshi G Mohammad*, A I R 1967 S C 122

Shri Jagan Nath Temple Act 1954 cannot be declared ultravires of article 14 as the Temple occupies a unique position in the State of Orissa and is a temple of National importance and no other temple in that State can compare with this temple. This temple constitute a class by itself. Though the provisions of Shri Jagan Nath Temple Act 1954 is in many respect different from the general Orissa Hindu Religious endowment Act, 1952 and prima facie looks to be discriminatory but actually it is not so. While relying on earlier decision in *Tilkayat Shri Gobind Lal Ji v State of Rajasthan* A I R 1963 S C 1638 the Supreme Court held that Orissa Act 11 of 1955 referred to above is a valid law. *B K Dev v State of Orissa*, A I R 1964 S C 1501

475 Classification of manufacturers for giving exemption etc

Manufacturers employing 50 or more workers constitute a well defined class. Similarly manufacturers carrying on manufacture with the aid of power exceeding 2 H P also constitute a well defined class. It is wrong that the size does not make any difference. The bigger manufacturers are able to effect economy in their manufacturing process and their out turn being large and rapid they are able to under sell small manufacturers. Thus exempting small manufacturers from excise duty etc is legal and valid. Such a classification is in the interest of Co-operative Societies, Cottage Industries and small manufacturers. There is no discrimination. Similar considerations will prevail when exempting of trades regarding small manufacturers employing not more than 50 persons and carrying on their manufacturing process with power not in excess of 2 H P. Even the attack under articles 19 and 25 will also fail. *British India Corpn Ltd v The Collector Central Excise, Allahabad* A I R 1963 S C 104

476 Vexatious litigants may constitute a class

The vexatious Litigation (Prevention) Act of 1949 is not discriminatory as this Act does not seek to create an unreasonable distinction between litigants and litigants. The litigants who are to be prevented from approaching the court without the sanction of the High Court constitute a class by themselves. These are the persons who habitually and without reasonable cause file vexatious actions civil or criminal. These persons are not stopped but are merely checked so that the court may examine the bonafide of the litigant. The object of the Act is to promote public good. It is no right of a citizen to file vexatious suits and harass other citizens. *P H Mamlu v State of A P* A I R. 1965 S C. 1827

477 Lawyers practising on original side in Calcutta constitute a class

The classification of the legal practitioners in the Calcutta High Court practicing on the original side into three categories namely (i) those who only plead (ii) those who both plead and act (iii) and those who act, is the result in historical process which began about

two hundred years ago and is reasonable. Granting of separate accommodation to those three sections in the High Court building does not amount to denial before law: *Pabitra Kumar v. State of West Bengal*, A. I. R. 1964 S. C. 593.

478. Odd cases may be treated differently.

There is no discrimination when special treatment under Rules is given to certain odd cases. In equating the posts of the allocated Governmental servants concerned to equivalent posts, it is always possible that a particular post may not fit with the kinds of post existing in the principal successor State. Such a post has to be treated by itself and if no equivalent post is available, there is no discrimination on the part of the Government when it declines to equate: *State of Maharashtra v. M. S. Association*, A. I. R. 1965 S.C. 625.

479. Person may constitute two classes in same State and under the same Act.

If a different treatment meted to various person living in the same State is based on reasonable classification then it is immune from attack under Article 14. The provisions of Bhopal State Agricultural Income Tax Act of 1933 which imposed tax on persons carrying on agricultural operations in Bhopal Region was held to be constitutional. The ground of attack was that no such tax was imposed on person carrying on agricultural operations in other regions of Madhya Pradesh State. It was held that the differential treatment becomes unlawful only when it is arbitrary or not supported by a rational relation with the object sought to be achieved. Every law is not supposed to have universal application. Where the differential treatment can be supported on historical reasons the same cannot be declared ultravires. The decision given in *B. Shukla v. State of Madhya Pradesh*, 1962 Sup (2) S. C. R. 257 and *State of Madhya Pradesh v. Gwalior Sugar Co. Ltd.* 1962-2 S. C. R. 619 was relied upon in the case: *State of Madhya Pradesh v. Bhopal Sugar Industries*, A. I. R. 1964 S. C. 1179.

Article 14 does not prohibit reasonable classification for the purposes of legislation and a law would not be held to infringe Article 14 if the classification is founded on an intelligible differential and the said differential has a rational relation to the object sought to be achieved by the said law. The differences between the woman who is a prostitute and one who is not certainly justify their being placed in different classes. So too, there are obvious differences between a prostitute who is a public nuisance and one who is not. Section 20 of the Suppression of Immoral Traffic in Woman and Girls Act, 1956 which authorises a Magistrate to hold an enquiry into the fact whether a particular woman is a prostitute or not cannot be called as ultravires of article 14. Similarly dividing the prostitutes into two categories one more dangerous and the other less can also not be called bad: *State of Uttar Pradesh v. Kaushalya*, A. I. R. 1964 S. C. 466.

480. Different classes of public servants may be treated differently in the same State.

If the discrimination if any can be sustained on the ground that

the differentiation arises from geographical classification based on historical reasons the same cannot be attacked as ultravires of Constitution. Different rules may govern different classes of Public Servants in the same State. *Ram Parshad v State of Punjab*, A I R 1966 S C 1607. *Lachman Dass v State of Punjab* A I R 1963 S C 222.

481 Fixation of maximum rent without making distinction does not violate Article 14.

A law which has been passed for the purpose of effecting an agrar an reform it would be pedantic to ignore the essential basis of its material provision merely on the ground that the concept of social justice on which the said provisions are based has not been expressly stated to be one of the objects in the preamble. The fact that section 6 (1) of the Mysore Tenancy Act does not make any distinction between irrigated and non irrigated lands in the fixation of maximum rent does not lead to the conclusion that it violates Article 14 of the Constitution. *R S Suamys v State of Mysore* A I R 1966 S C 1172.

482 Selection of candidates getting less marks in an interview is illegal.

Selection of candidates who had obtained lesser marks than those who were rejected cannot be sustained. Selection of those who had obtained less number of marks in preference to those who had obtained greater number of marks other things being equal is not warranted by Article 14 of the Constitution of India. It is wrong to allow as a matter of compromise selection of those candidates who had not appeared for viva voce test at all and of those candidates when there was nothing to compare them with those who had failed in the earlier selection. *Mysore Public Service Commission (functions) Rules 1957 Rule 4 (3)* is not intended to by pass selection on merits. *Chanabonathiah v State of Mysore* A I R 1965 S C 1293.

483 Condition applicable to all cannot be called discriminatory.

The provisions of Income Tax Act 1922 as contained in Section 10 (2) (vib) which provide for a rebate if a Motor Vehicle is sold to Government at any time before the expiry of 10 years is not discriminatory as this condition is applicable to all assessee. There is no benefit if the vehicle is sold to a person other than Government. The discrimination if any arises on the choice of assessee and not because of the provision of the statute. *Chittor Motor Transport v Income Tax Officer* A I R 1966 S C 570.

484 Gold smiths who work themselves constitute a class.

The provisions of Orissa Sales Tax (Delegation) Act 1961 which gives benefit to goldsmith who actually make gold ornaments or to those persons who keep in their continuous employments artisans who produce gold ornaments cannot be called discriminatory if the same benefit is not given to persons who do not fulfill the above requirements. *Shri Krishna Murthi v State of Orissa* A I R 1964 S C 1581.

485 Factories of three years standing may constitute a class. The provision of Employees Provident Fund Act 1962 do not

suffer from the vice of discrimination and do not violate Article 14 of the Constitution as this act applies to all establishments except those mentioned in Section 16 (a). The leaving out of co-operative societies and establishments which have been in existence for less than 3 or 5 years does not offend article 14 as the idea is to not to burden the newly established undertakings : *Mohd. Ali v. Union of India* A. I. R. 1964, S. C. 980.

486. State may tax only few Articles.

The power conferred on the Court to strike down a taxing statute on the ground of violation of article 14 of the Constitution has to be exercised with circumspection bearing in mind the power of the State to levy taxes for carrying out its welfare activities a necessary attribute of sovereignty and in that sense it is a power of paramount character. It would be idle to contend that a State must tax everything in order to tax something. Where only Tea and Jute were selected under the Assam Taxation (on goods carried by road or in land water ways Act 1961) it was held the tax cannot be struck down as discriminatory because other articles were not taxed. While relying on earlier decision in *K. T. Moopil Nair v. State of Kerala*, 1961 3 S. C. R. 77 the Supreme Court held that though it is possible to declare a taxing statute to be void but the circumstances of the case did not warrant such an action : *Khyerbari Tea Co. v. State of Assam*, A. I. R. 1964 S. C. 925.

487. Government to decide whether a civil servant should be proceeded departmentally or other wise.

It is for the Government to decide what action should be taken against the Government Servant for certain misconduct. It is for the Government to decide whether a particular action calls for criminal prosecution or only departmental proceedings, would be sufficient. Such a discretion in the Government is not in violation of the provisions of article 14 of the Constitution. The service rules apply equally to all the members of the service and to all persons similarly situated and are therefore not discriminatory. The Government is free after considering the nature of the case to decide whether criminal prosecution should be launched or not. The Government is also free to conduct departmental proceedings after the close of criminal proceedings if instituted : *Partap Singh v. State of Punjab*, A. I. R. 1964 S. C. 72.

488. Tea plantation may be treated differently.

The difference in the provisions in Kerala Agricultural Income Tax Act 1950 which provides for different procedure for the computation of agricultural income from tea plantation and from other plantations is not violative of Article 14 as the same is based on good reasons. The decision given in *Karintharuvu Tea Estates Ltd. v. State of Kerala* was distinguished in this case : *Travancore Rubber and Tea Company Ltd. v. State of Kerala*, A. I. R. 1964 S. C. 572.

489. Difference in procedure in settling dispute, no discrimination.

Where there was difference in procedure for disputes being settled by Chief Commissioner or Arbitration or Board of Arbitration, it was held that there was no violation of Article 14, as there are provisions

for appeals against certain orders or decisions, made in rules. *Banarsi Dass v. Cane Commr.*, A I. R. 1963 S. C. 1417.

490. Section 85 of Factories Act not discriminatory

Section 85 of the Factories Act 1948 authorises the State Government to issue a notification applying all or any of the provisions of the Act to any place in which a manufacturing process is being carried on. This involves the consequence that the place is deemed to be a factory and the persons working therein are deemed to be workers. The Supreme Court, relying on its earlier decision in A I. R. 1963 S C 806 held that the provisions are not discriminatory and they do not impose any unreasonable restrictions upon the fundamental right of the owner of the factory to carry on business *Bhikusa Yamasa Kshatriy Private Ltd v. Union of India*, A I R 1963 S C. 1591.

491. Trial by Section 30 Magistrate is not discriminatory.

Where a case was referred to a Magistrate appointed under Section 30 of Criminal Procedure Code, it was held that there is no infringement of Article 14 *Bundhan Chaudhry v State of Bihar*, A. I. R. 1955 S C 191 1955 (1) S C R 1045

492. Law authorising appointment of special Magistrate

A law vesting discretion in an authority to appoint special Magistrates under Section 14 of the Code of Criminal Procedure to try cases entirely under the normal procedure, cannot be regarded as discriminatory and is not hit by article 14 of the Constitution. Thus where special Magistrates were appointed by notification by Maharashtra Government having jurisdiction over Greater Bombay and Ratnagiri District and all powers of Presidency Magistrates in respect of trial of cases involving seizure of foreign gold were conferred upon them, it was held that there was no discrimination and the Notification cannot be declared ultravires *Jagannath Homu Prasad v State of Maharashtra*, A I R 1963 S C 708

493. Employees doing same work not entitled to get same pay.

There is no violation of Article 14 if the State constitutes services consisting of employees doing the same work but with different scales of pay or subject to different conditions of service. The argument that Article 14 requires that equal work must receive equal pay or that if there is equality in pay and work there have to be equal conditions of service, cannot be upheld. The Supreme Court while relying on an earlier decision in *Kishori v Union of India*, A I. R. 1962 S. C. 1139 held that the Government which is carrying on the administration has necessarily to have a choice in the Constitution of services to man the administration and the limitation imposed by the Constitution are not such as to preclude the creation of such services. The emergency or exigency of time may create a necessity for creating some differentiation *State of Punjab v. Joginder Singh*, A I. R. 1962 S C 913

494. Temporary Government servant

Article 14 and 16 are not applicable to Civil Servants who were employed on the basis of a contract on temporary basis. Their services can be terminated by a notice *Salish Chandra Anand v. The Union of India*, (19 3) S C. R 655 A I R 1953 S C 250

495. Simple and short procedure for trying certain offences.

Where under the Saurashtra State Public Safety Measures III Amendment-Ordinance certain special Courts of Criminal Jurisdiction in certain areas to try certain classes of offences with a simplified and shorter procedure were established, it was held that the Act is *intravires*: *Kathai Rani v. State of Saurashtra*, A. I. R. 1953 S. C. 123 : 1953 S. C. R. 435.

496. Right to cross-examine denied, will not render law bad.

Order of externment directing the petitioner to leave Bombay under section 27 (1) of the City of Bombay Police Act, (4 of 1952), was held to be valid although there was no right to cross-examine the witnesses and there was a departure from the ordinary procedure because this departure was justified by the object in view : *Gurbachan Singh v. State of Bombay*, A. I. R. 1952 S. C. 221 : 1955 S. C. R. 737.

497. Preventive Detention Amendment Act, 1951.

Classification made by section 3 of the Preventive Detention-Amendment Act 1951 was held to be fair and reasonable : *Shamarao v. D. M. Thana*, A. I. R. 1952 S. C. 324 : 1952 S. C. R. 683.

498. Barred right of appeal cannot be revived.

Where the right of appeal become barred before the Constitution in relation to a trial under Mysore Special Criminal Courts Act of 1942 it was held that the right could not be revived : *Abdul Khairder v. State of Mysore*, A. I. R. 1953 S. C. 355.

499. Succession cannot be determined by an Act.

Where Willuddowala Succession Act of 1950 aimed at putting an end to a dispute regarding succession to the personal estate of Nawab Willuddowala, it was held that the Act was discriminatory as other persons eligible to enforce their claim were deprived of their right : *Amirunissa v. Mehabub Begham*, A. I. R. 1953 S. C. 91 : 1953 S. C. R. 404.

500. State can fix minimum of tax.

State is competent to fix its own limits below which it may not consider it worth while to impose tax. Consequently sections 5 and 10 of Bombay Sales Tax Act of 1952 cannot be said to be discriminatory : *State of Bombay v. United Motors Ltd.*, A. I. R. 1953 S. C. 252 : 1953 S. C. R. 1069.

501. Requirement of capitation fee is legal.

Rule requiring capitation fee from non-resident of a State does not in any way infringes article 14 : *D. P. Joshi v. State of M. B.*, A. I. R. 1955 S. C. 334 : 1955 (1) S. C. R. 1215.

502. Lawyer contesting municipal Election not to accept brief for or against Municipality—Conditions is not violative of Article 14.

Where a disqualification was imposed upon a lawyer contesting elections for municipal committees that he is not to accept a brief for or against the committee, it was held that it comes under reasonable classification and there is no violation of Article 14: *Hansmuller v. Superintendent Presidency Jail, Calcutta*, A. I. R. 1955 S. C. 166; 1955 S. C. R. 1004.

503. Absorbed employees of Municipal Board cannot claim the same treatment as given to those already in government service

Where District Board and Municipal Board Teachers were absorbed by the Punjab Government by an Executive order when the Schools run by Municipal Board and District Board in the Ambala and Jullundur Division of Punjab were taken over by the Educational Department of the Punjab Government and the teachers so absorbed were given same scales of pay and grades as were applicable to the teachers in Government employment, it was held by majority of judges that there was no discrimination although there was certain inequality between the promotion of teachers already with the Education Department and between those who were absorbed latter on. It was held that as the two classes of teachers started dissimilarly and they continued working dissimilarly any dissimilarity in their treatment would not be a denial of equal opportunity. *State of Punjab v Joginder Singh* A I R 1962 S C 913

504 Same class of property subjected to different tax rates—Law is void

If same class of property similarly situated is subjected to an incidence of taxation which results in inequality then that law is to be declared invalid. *K T Moopilair v. State of Kerala* A I R 1961 S C 552 1961 3 S C R 77

505 Intention of legislature is immaterial

Where the effect of legislation is discriminatory it is not necessary to look into the intention of the legislature and it is immaterial that the purpose of the legislature was not to discriminate. It is not necessary for a person to prove the hostile or inimical intention against a class or persons where on the face of it it is clear that there is denial of equal privileges. *State of West Bengal v Anwar Ali* A I R 1952 S C 75. It is further immaterial to see how the Act would actually be worked out.

506 Exercise of discretion by the State

The State cannot be completely divested of its right to exercise discretion. And every exercise of discretion cannot be called discrimination unless there is some material or appreciable disadvantage to a person. Where executive or an administrative body in carrying out an Act acts in a discriminatory manner then the particular act can be declared void. *Ram Kishan Dalmia v Justice Tandonkar* A I R 1958 S C 538. *Kathi Raning Rewal v State of Saurashtra* A I R 1952 S C 123. A discretionary power cannot necessarily be a discriminatory power and it is not proper to assume that there will be abuse of power specially when its exercise is vested in the Government and not in a minor official. *Mater jog Doley v H C Bhasi* A I R 1956 S C 44

There is some distinction between the discretion which can be exercised with regard to fundamental rights and that with regard to other rights conferred by some statute. Article 14 can be invoked only when there is an infringement of a fundamental right and secondly where there is possibility of any real or substantial discrimination. *Panna Lal v Unson*, A I R 1957 S C 397

507. Discretion given to Administrative Tribunal by law cannot be challenged.

Where an administrative tribunal is given the power to exercise discretion and to dispose of cases according to the circumstances of each case, then it is no ground to challenge the Act under which the tribunal is constituted. *State v. Ajaib Singh*, A. I. R. 1953 S. C. 10.

Similarly, where general classification is laid down by the legislature, and the executive is given the power to select the person or the things to whom the law is to be applied, the Act is not open to challenge: *Kedar Nath v. State of West Bengal*, A. I. R. 1953 S. C. 404; *Kalhi Ranning v. State of Saurashtra*, A. I. R. 1952 S. C. 123. Where the Legislature confers on the executive absolute, naked and arbitrary power and does not lay or indicate any standard by which the discrimination is to be made, then the validity of such an Act is open to an attack under Article 14: *State of West Bengal v. Anwar Ali*, A. I. R. 1952 S. C. 75.

508. Direction to Income Tax officer.

Where a direction was given that all officers under the Income-tax Act are bound to follow the directions of the Central Board of Revenue, it was held that there was no violation of Article 14. And similarly where an Income-tax Officer does not disclose the materials on which he is making the final assessment, there is no infringement of Article 14: *Income tax Officer v. D. B. R. Mills*, 1961 S. C. 540.

No doubt, a person may constitute a class in itself, but where there is no reasonable basis of classification which can be deduced from the surrounding circumstances or matters of common knowledge, then in such cases the law has to be struck down: *Ram Kishan v. Justice Tendolkar*, A. I. R. 1958 S. C. 538.

509. Discretion of Government.

Where on the scrutiny the Courts come to the conclusion that a statute does not lay down any principle or policy for the guidance of the exercise or discretion by the Government in the manner of selection or making classification, then such a statute cannot be kept on the statute book because it gives arbitrary and uncontrolled power to the Government to discriminate between persons or things similarly situated. But where there is a policy or principle laid down for the exercise of the discretion, then in such cases the Courts will uphold the law as constitutional. Where the Government in making the selection or classification does not follow such policy or principle then what has to be struck down is not the statute itself but the executive action: *Ram Kishan v. Justice Tendolkar*, A. I. R. 1958 S. C. 538.

510. Customs can be declared void.

Where a custom having the force of law is hit by Article 14, then it must be declared void unless there is some clear justification for its application in a part of the State only.

511. Construction of Article 14.

The Courts will not adopt such approach in construing Article 14 which will throttle the beneficial approach: *Bachan Dass v. State*, A. I. R. 1952 S. C. 265; *Harnam Singh v. R. T. A. Calcutta Region*, A. I. R. 1954 S. C. 190; This article provides one of the most impor-

tant and valuable guarantees in the Indian Constitution which should not be allowed to whittled down: *Charanjit Lal v. Union of India* A. I. R. 1951 S. C. 41.

512. Doctrine of due process-Value of American decisions.

The American decisions which develop the doctrine of due process under the Federal Constitution cannot help the Courts in the construction of equal protection clause so far as Indian Constitution is concerned. *Babu Lal v. Collector*, A. I. R. 1957 S. C. 677, *State of U P v. Deoram* A. I. R. 1960 S. C. 1125.

513. Retrospective effect of the Article.

The law passed prior to the Constitution cannot remain on the statute book if it is inconsistent with Article 14. Hence action taken or any liability incurred after the Constitution comes into operation will be declared void. Laws which are inconsistent with part III become void from the date of the Constitution and any liability or action taken prior to the Constitution cannot be nullified. *Abdul Khadar v. State*, A. I. R. 1953 S. C. 355. Thus if proceedings were commenced before the inauguration of the Constitution, then all the subsequent proceedings which do not conform to the principle of equality are to be declared void. *Lachman Dass v. State of Bombay*, A. I. R. 1952 S. C. 235, *Menakshi Mills v. V. Sastri*, A. I. R. 1955 S. C. 13. Procedure before the commencement of the Constitution cannot be challenged on the ground that they are in violation of Article 13. *Qasim Razvi v. State of Hyd*, A. I. R. 1953 S. C. 56, 1953 S. C. R. 589.

514 Does principle of equality before the law apply to State ?

The State as a person constitute a different class as compared with private citizens. And it cannot be said that the State ceases to function as a State as soon as it engages itself in a trade like ordinary trader: *Raja Kulkarni v. State*, A. I. R. 1954 S. C. 73. The principle of equality before the law was made applicable in a case where exemption was granted to a State transport under sub-section 3 (A) of Section 42 and it was held that such an exemption is covered by Article 14. Where the State is acting in the exercise of its ordinary Governmental function it cannot be equated with a private citizen.

515. Article 14 applies to all persons whether citizens or not.

A corporation will be entitled to the benefits of article 14 as it constitutes a juristic person. *Charanjit Lal v. Union of India*, A. I. R. 1951, S. C. 41. Article 14 covers every person. The words used in the Article are "Any person" and not "citizen" which term has been used in some other articles.

516 Foreign company cannot invoke Article 14 if Article 19 is involved.

A Foreign Company is not entitled to claim the benefit of Article 19 since only citizens of India have been guaranteed the right of freedom enshrined in Article 19. A plea under article 31 as well as under article 14 cannot be upheld because in supporting the said pleas one has inevitably to fall back upon the fundamental right contained in article 19. Foreign company not being citizen cannot get any benefit, as it is not citizen. *Indo China Steam Navigation Co. v. Jasjit Singh*, A. I. R. 1964 S. C. 1140. The earlier decision of the Supreme Court reported as *Sripunjanrai v. Collector of Customs*, A. I. R. 1958 S. C. 845 may also be noted.

517. Alien.

Aliens can equally invoke the principle of equality along with the citizen but the State can while exercising its discretion and power of making reasonable classification place restrictions on aliens, which are not applicable to citizens. For example, restrictions can be imposed as regards to entry into the country or doing business or owning immovable property. Section 3 (1) (b) of the Preventive Detention Act 1950 and Section 6 (2) (c) of the Foreigners Act 1946 cannot be held ultra vires as the classification of foreigners is reasonable and rational: *Hans Muller v. Superintendent*, A. I. R. 1955 S. C. 367.

518. Who can raise objection.

Only a person whose rights are directly affected by the impugned law can raise the question of equality: *State of West Bengal v. Anwar Ali*, A. I. R. 1952 S. C. 75.

A shareholder is entitled to take an objection where an Act was passed which provided that the management of a company will be taken over by the Government through its directors: *Charanjit Lal v. Union of India*, A. I. R. 1951 S. C. 41.

519. Taxation laws.

Principle of equality before the law is applicable to the taxation laws also. It follows that the limitation placed by the equality clause will also be made applicable to such laws. A person who is subjected to a tax cannot complain of this discrimination if all persons similarly placed are similarly taxed. Where there is fixation of minimum taxable turnover there is no discrimination and no violation of Article 14: *State of Bombay v. United Motors*, A. I. R. 1953 S. C. 252. Where tax is imposed only on the sale of hides and skins it cannot be challenged on the ground that the purchaser of other commodities were not taxed: *V. M. Syed v. State of Andhra*, A. I. R. 1954 S. C. 314. Where a distinction is made between the merchants who take out licences and who do not, there is no violation of article 14 as the classification is based on rational grounds. A challenge cannot be made on the ground that the lower income groups for the purposes of income tax are being treated generously. Where a change occurs in the law and a provision is inserted that the old law will be applicable to the rights and liabilities which accrued before the change is effected, it cannot be said that there is violation of article 14: *Ramji Lal v. Union of India*, A. I. R. 1951 S. C. 97. Where an amendment was made in section 34 of the Income Tax Act 1922, by act 33 of 1954, it was held that Section 5 (I) of the Taxation of Income (Investigation Commission) Act is ultra vires as the constitution of tribunal had become discriminatory in character: *Meenakshi Mills v. Vishwanatha*, A. I. R. 1955 S. C. 13; *Muthiah v. I. T. Commr.* A. I. R. 1956 S. C. 269. Where the income tax authority by an executive order unsupported by law transferred all the cases of the petitioners only by an omnibus whole sale order passed in general terms without making any reference to the point of time, it was held that the order was discriminatory and was calculated to inflict considerable inconvenience and harassment on the petitioner: *Bidi Supply Co. v. Union of India*, A. I. R. 1956 S. C. 479. Section 5 (7A) Income Tax Act 1922 was held to be constitutional as it did not confer upon the Central Board of Revenue or the Commissioner of Income-Tax arbitrary power un-

fattered, unguided or uncontrailled so as to enable the authority to pick and choose one assessee out of those similarly situated : *Panna Lal v Income Tax Officer*, A. I. R. 1957 S C 397

520. Power of State Government to order trial before Sessions Courts or by Jury

Where power is conferred under Section 269 of the Criminal Procedure Code to order trials before Jury there is no infringement of the equal protection of the laws because the discretion is to be exercised not in individual cases but only in classes of offences. But where a notification was issued under Section 269 of the Criminal Procedure Code whereby an accused was denied the right to be tried by Jury, while other accused were allowed this right it was held that there was an infringement of Article 14 *Dhirendre Kumar v. Superintendent* A I R 1954 S C 424

521 Special Courts and special procedure.

The implication of Article 14 is that all litigants similarly situated are entitled to the same procedural rights, therefore, rules of procedure laid down by law also fall within the scope of article 14 in the same way as the substantive law *Duarka Dass v Sholapur Sp. & Wg Co* A I. R. 1954 S C 121 Where certain provisions introduce a departure from the ordinary law of procedure to the prejudice of an accused, it will amount to discrimination *Lachnan Dass v State of Bombay* A. I. R. 1952 S C 235 But the State is competent to make different provision as to procedure for different types of cases *Qasim Razvi v State of Hyderabad* A I R 1953 S C 156 Where special powers were conferred on a Second Class Magistrate under Section 14 of the Criminal Procedure Code in respect of a particular case, thus constituting him a special Magistrate it was held that there was no violation of article 14 as the special Magistrate had to try the case entirely under the normal procedure *M K Gopalan v State of M. P.*, A. I. R. 1954 S C 362.

Where there are provisions made for the trial of certain offences by special Courts, then in determining whether the special procedure is arbitrary and unreasonable the preamble, the provisions, the purpose and the policy of the Act should be taken into consideration *Kidar Nath's Case*, A I R 1953 S C 404 Where special Courts are established to try cases according to the race, creed, religion of the accused person, the Act would be ultravires. Where any deviation is made in the normal procedure of trial, it is essential to see that the essential safeguards are not curtailed. Where in spite of the deviation, the same benefits as under normal trial are substantially enjoyed by the accused person there will be no infringement of Article 14 *Qasim Razvi v. State of Hyderabad*, A I R 1953 S C 156. Where a new law of procedure makes an exception in the cases which are pending it cannot be said that there is an infringement of Article 14, as the cases covered by the saving clause constitute a class in themselves *B Satyanaryana v. Venkateshpaya*, A I R 1953 S C, 194 Where power is conferred on the Government, for allotting cases for trial by special Courts, the entrustment of such power does not per se make the Act discriminatory.

Where it can be shown that the discretion exercised by the executive is against the standard or contrary to the declared policy or the object

of the legislation, then such an exercise of discretion can be challenged and declared void under Article 14: *Kidar Nath v. State of West Bengal*, A. I. R. 1953 S. C. 404. Where there is no principle or policy disclosed in the Act, to guide the exercise of discretion then the Act will be void. Where the principle and the object for constituting a separate tribunal is "speedier trial of certain offences", it was held that this is a very vague and indefinite principle to constitute a reasonable basis for classification: *State of West Bengal v. Anwar Ali*, A. I. R. 1952 S. C. 75. Where certain provisions were enacted for the establishment of a Special Court of Criminal Jurisdiction in the interest of public safety, maintenance of public order and preservation of peace and tranquility in the State, it was held that the simplified and the shortened procedure was not in violation of Article 14: *Kalra Ranning v. State of Saurashtra*, A. I. R. 1952, S. C. 123. Where Section 4 of the West Bengal Criminal Law Amendment (Special Courts Act of 1949), provided for Special Courts with respect to certain offences, set up in the schedule it was held that there was no violation of article 14, as the offences triable was specifically mentioned in the schedule. Merely because the executive is empowered to refer individual cases for trial by special Courts, it will not vitiate the Act under this article: *Kidar Nath v. State of Bombay* A. I. R. 1953 S. C. 404. The provisions of Section 207 and 207 A of the Criminal Procedure Code are not inconsistent with article 14 and, therefore, are Constitutional: *Macherela Hanumananth Rao v. Union of India*, A. I. R. 1957 S. C. 927. Sections 405 and 409 of the Indian Penal Code which create the offence and define criminal breach of trust and make a distinction between a public servant and an ordinary individual, do not infringe Article 14: *Om Parkash v. State of U P.*, A. I. R. 1957 S. C. 458. Similarly Section 421 of the C. P. Code whereby a classification is made as regards persons in jail and those outside does not violate article 14, as there is reasonable classification. Where the act of discrimination consists only in applying a different law which is good and in force which creates no additional hardships for an accused, it cannot be described as constituting discriminatory treatment within the meaning of article 14. Thus where the accused is not denied the advantages of fair and normal trial there is no violation of Article 14.

522. Facility for women students etc.

The requirement that colleges should provide certain facilities for women before they are admitted are not discriminatory. A rule of admission to a college which exempts the bona fide residents of the State in which the colleges are situated from the capitation fee while the same was imposed on the non-residents was held not to violate article 14: *D. P. Joshi v. State*, A. I. R. 1955 S. C. 334: *Chuterlekha v. State of Mysore*, A. I. R. 1964 S. C. 1823.

523. Requirement of Licences.

Where heavier fee is charged from one person as compared with the other without their being any reasonable basis for such discrimination, it will be hit by article 14. Where small taxi cabs were charged a different licence fee as compared with other taxis with higher horse power, it was held that there was no violation of right to equality: *Harnam Singh v. R. T. A. Calcutta*, A. I. R. 1954 S. C. 190.

524. Fixation of minimum fee for different classes not bad.

Where by a notification under Bombay Agriculture Produce Market

Act of 1939 maximum fee to be charged was fixed and by laws provided for issue of licences to 'a' class and 'b' class dealers it was held that article 14 is not hit at all and the restriction is reasonable and is in the interest of general of public. *Mohammad Hays v. State of Gujarat*, A I R 1962 S C 1517

525 Provisions relating to keeping prisoners in isolation.

Where prisoners were separated for maintenance of proper discipline, it was held that para 573 of Jail Manual was not violative of article 14, but on the facts of this case it was held that the powers exercised was mala fide and the separate confinement was held to be illegal *Ranbir Singh Sehgal v. State of Punjab*, A. I. R. 1962 S C 510

526 Bad and good provisions not separable

Where bad provisions cannot be separated from valid provisions, the whole act becomes bad. Thus provisions relating to plantation under the Kerala Agrarian Reforms Act 1961, made discrimination, so far as the plantation of Paper and Areca was concerned, and the Act was hit by article 14 *K R. Kunam v State of Kerala*, A. I R. 1962 S. C 404.

527 Arbitrary selection of sub judges held bad

Where the High Court in exercise of its authority selected some persons to be appointed as subordinate judges in preference to the plaintiff it was said that the exercise of power by High Court was not justified and also that there has occurred violation of Article 14. *High Court of Calcutta v. Amal Kumar*, A. I. R 1962 S. C. 1704.

Where the legislation validated the order passed by the executive authority between 18th of September, 1948 and 14th of March 1952, that is when there was police action in Hyderabad, and right to establish a claim in Civil Courts was taken away, the attack made on Section 13 (2) of the Hyderabad Aliyat Enquiries Act of 1932 was repelled and it was held there was no contravention of Article 14: *Sekander Jihan v. State of Andhra Pradesh*, A I. R. 1962 S. C. 996.

528 Discrimination should be pleaded and proved-Burden of proof

A person relying upon the plea of unlawful discrimination which infringes a guarantee of equality before the law or equal protection of the laws must set out with the sufficient particulars his plea showing that between the persons similarly situated discrimination has been made which is founded on no intelligible differentia. If the claimant for relief establishes similarity between persons who are subjected to a differential treatment it may be upon the State to establish that the differentiation is based on a rational object sought to be achieved by legislature. In this case pleadings were held to be insufficient to prove the plea of discrimination *Chandra Mohan v. State of U P* 1966 S C 1980; *Karla Education Society v. State of U. P.*, A. I. R. 1966 S C. 1307.

The nature of proof required to challenge a tax must be definite. Where it was only mentioned that the tax paid was very excessive and fixed arbitrarily it was held that the pleadings are not sufficient. *Ajoy Kumar v. Local Board*, A. I. R. 1965 S. C 1561. Merely because the age of retirement is fixed at 55 years instead of 58 years which is

532. Rules may fix maximum fee.

Simply because maximum fee is not fixed by the Act but is left to be fixed by the rules it cannot be said that the statute in question is ultravires of Article 14 as conferring naked and arbitrary powers : *Jan Mohd v. State of Gujarat*, A. I. R. 1966 S. C. 385.

533. Scheme of annuity deposit is legal.

Scheme of annuity deposit cannot be called violative of Article 14 on the ground that it makes unlawful discrimination between individuals. Article 14 of the Constitution guarantees equality before law and equal protection of laws. But this does not exclude the power of the legislature to make a reasonable classification : *Hari Krishna v. Union of India*, A. I. R. 1966 S. C. 619 ; 1966 I. S. C. J. 131.

534. Three tier system is legal.

The three tier system prevalent in Police Force in State of Rajasthan as is applicable for the purposes of promotion from Constable to Head Constable does not contravene Article 14 and 16 (a) : *Ram Sharan v. Deputy Inspector of Police*, A. I. R. 1964 S. C. 1559 ; 1964-7 S. C. R. 228.

535. Interviews may regulate admissions to schools.

Selection by interview is one of the well accepted mode of selection. Where an order was passed by the Government which provided for interviews for regulating admission to colleges and where in the order there was definite criteria for giving marks etc. it was held to be intra-vires of Article 14 and 15 : *Chiter Lekha v. State of Mysore*, A. I. R. 1964 S. C. 1823 ; 1964-6 S. C. R. 368.

536. Junior civil servant retained and senior removed-Does not violate Article 14 if removal is the result of disciplinary proceedings.

Where a Civil servant is removed from service for his unsatisfactory work and not because of abolishing of posts it cannot be said that the order terminating the service is violative of article 15 because junior and less qualified servants were retained in the service. Such a question may arise in the case of retrenchment but not in the case of termination of services taking place as a result of departmental disciplinary proceedings : *Champak Lal v. Union of India*, A. I. R. 1964, 1854 ; (1964) 5-S. C. R. 190.

537. Registered dealers may constitute a class.

A Sale Tax Act which provides for different procedure for taking action against a registered and unregistered dealer cannot said to be violative of Article 14 of the Constitution. *Ghanshyam Dass v. Regional Assistant Commissioner*, A. I. R. 1964 S. C. 766.

538. Temporary deprivation does not violate Article 14.

The State in the democratic set up is vitally interested in securing a healthy system of education for the coming generation of citizens and if the management is recalcitrant and declines to afford facility for the enforcement of the provisions enacted in the interests of students, a provision authorising the State Government to enter upon the management through its authorised controller cannot be regarded as unreasonable. Section 15-B (B) of the U. P. Intermediate Education Act 1921 is not ultravires of Article 14 or 19 or 31 of the Constitution as temporary deprivation of management to secure

compliance of Education Act does not hit either Article 14 or deprive any body of the property : *Karta Education Society v. State of U. P.*, A. I. R. 1966 S. C. 1307.

539. Section 87-B of the C. P. C. is not discriminatory.

Section 87-B of the Civil Procedure Code which gives certain privileges to rulers of former States cannot be declared ultravires of Article 14. This provision is based in accordance with the policy contained in Article 362 of the Constitution of India : *Norattan Kishore v. Union of India*, A. I. R. 1964 S. C. 1590 ; 1964-7 S. C. R. 55.

540. Statute providing quasi judicial machinery not bad.

A provision of law which provides a quasi judicial machinery giving the persons concerned an opportunity to state their case cannot be called violative of article 14 on the ground that it confers arbitrary and naked powers to impose tax. Section 31 of the U. P. Municipality Act, 1916 was held to be intravires : *Gopal Narain v. State of Uttar Pradesh*, A. I. R. 1964 S. C. 730.

541. Carry forward Rule is violative of Article 14.

What is meant by equality in article 14 is equality among equals. It does not provide for absolute equality of treatment to all persons in utter disregard in every conceivable circumstance of the differences such as age, sex, education and so on. Indeed the aim of this article is to ensure that invidious distinction and arbitrary discrimination shall not be made by the State between the citizens who answers the same description but reasonable classification is permissible.

The carry forward rule which provided for representation in Central services and reservation of vacancies for scheduled caste and scheduled tribes permitting reservations of more than 50 per cent vacancies upto third year was held to be ultravires of article 14 and 16 of the Constitution of India. This rule permitted a perpetual carry forward of unfilled reserved vacancies in the two years proceeding the year of recruitment and provided addition to them of 17 1/2 per cent of the total vacancies to be filled in the recruitment years. If in two successive years no candidate from amongst the Scheduled Castes and Tribes was found to be qualified for filling any of the reserved post and supposing that in each of these two years the number of vacancies to be filled in a particular service was 100, by operation of the carry forward rule the vacancies to be filled by persons amongst the scheduled caste and scheduled tribes would be 54 as against 46 by persons from amongst the more advanced class. This rule was held to be ultravires of Article 15 : *Devadasan v. Union of India*, A. I. R. 1964 S. C. 179.

542. Rotation I system is not bad.

Where recruitment to a cadre is from two sources, namely direct and promotees and rotational system is in force, seniority has to be fixed as provided by alternately fixing a promotee and a direct recruit in the seniority list, there is no violation of the principle of equality before law as contained in Article 16 by following rotational system of fixing seniority in a cadre half of which consist of direct recruits and half of the promotees. This rotational system does not violate the equality clause. The case of *T. Devadasan v. Union of India*, A. I. R. 1964 S. C. 179 which dealt with carry forward rule was distinguished in the case. *Merryman v. Collector* A. I. R. 1967 S. C. 52. This rotational system would not apply in case there is only one source of recruitment. But if a direct recruit is put before the promotee even though

he has come up on a latter date when making promotions to higher ranks, it will be hit by Article 14 as well as 16 of the Constitution of India *Mervyan v. Collector* (Supra).

543. Reichert value of ghee may be different in different Regions.

The provisions of Rule 5 of Food Adulteration Rules 1955 which provides for the standards of quality of the various articles of Foods specified in the appendix B of the Food Adulteration Rules does not offend Article 14. The test for Reichert or Reichert Meissl value of ghee is one of the important tests for detecting adulteration with certain vegetable oils. If on the basis of the various factors which obtain in the different areas some point to a bigger Reichert value and others neutralising it and after extensive surveys conducted from samples collected and analysed during various seasons, the country is divided into zones, under the rules in Appendix B and the minimum Reichert value ascertained and prescribed for each, there can be no violation of article 14 : *State of U. P. v. Kartar Singh*, A. I. R. 1964 S. C. 1135 (1964) 6-S. C. R. 437.

544 Statutes saved by Article 31 B not open to attack.

Where an attack was made on the validity of section 45 of the Madras Estate (Abolition and Conversion) into Ryotwari Act of 1948 on the ground that it violated article 14 of the Constitution, it was held that the provisions were not open to attack because article 31 (B) provides inter alia that the Act specified in 9th Schedule or any of the provisions thereof shall not be deemed to be void or ever to have become void on the ground that the Act takes away or abridges any of the rights conferred by any provision of Part III. So article 14 being in Part III of the Constitution cannot be made use of in attacking the Acts given in the 9th Schedule and it was held that the provisions of section 45 of the Act are not unconstitutional : *Rajabibi Mubba Gopala Krishna Yachendra v. Rajabibi S. K. Krishan Yachandra*, A. I. R. 1963 S. C. 842, (1963) Supp. 2. S. C. R. 280

545. Discrimination must be established by evidence.

Where the allegation made was that higher tax was imposed on certain cinema house it was held that as there was no evidence to establish discrimination the law cannot be declared bad : *Western India Theatre Ltd. v. Cantonment Board*, A. I. R. 1959 S. C. 582.

546. Qualification for Membership can be Imposed

Where it was provided that a person must be a member for 12 months of India Stock Exchange before applying for membership of Stock Exchange Bombay the condition was held to be not arbitrary : *M. A. Gandhi v. Union of India*. A. I. R. 1961 S. C. 21 ; 1961 (1) S. C. R. 191.

547. Special methods for the recovery of State dues not bad.

Where special facility for recovery of public demands and dues to State Government was provided, it was held as not violative of article 14 : *Mannalal v. Collector of Jhallawara*, A. I. R. 1961 S. C. 828 : 1961 (2) S. C. R. 962.

548. Special procedure for one man not bad.

Where complaint was sent to the Chief Minister and the latter sent the same to the Additional I. G. of Police and the investigation was held by Deputy Superintendent Police, it was held that taking into consideration the status of the accused, the procedure followed was not in any way violative of article 14 : *R. P. Kapur v. Parlap Singh Kairon*, A. I. R. 1961 S. C. 1117.

549. Subversive activities.

Words 'subversive activities' when used with reference to the national security were held to be sufficiently precise to sustain a valid classification : *P. B. Koleiah v. Union of India*, A. I. R. 1955 S. C. 232; 1951 S. C. R 1052.

550. Foreign exchange regulation.

Foreign Exchange Regulation Act was held not to offend article 14 and it was held that the power of transfer under section 23-D is neither unguided nor arbitrary.

Foreign Exchange Regulations do not violate Article 14 of the Constitution: *Shanti Prasad Jain v. Director of Enforcement* A. I. R. 1962 S. C. 1764, 1963-2 S. C. R. 297, *Union of India v Sukumar* A. I. R. 1966 S. C. 1206.

551. Not applying certain provision of criminal procedure etc.

Where the ordinary protection afforded to witnesses u/s 132 of the Evidence Act and section 161 (1) (2) of the Cr. P. Code has been denied to persons incharge of management of committees under section 239 and 240 of the Company's Act 1936, it cannot be said that article 14 has been infringed : *Rajanarainala Bansilal v. M. T. Mistry*, A.I.R. 1961 S. C. 2; (1961) 1 S.C.R. 417.

The classifications of such persons as a different class is reasonable and founded on intelligible differential.

552. Section 25 (b) Foreign Exchange Regulation is valid.

Where power is vested to transfer a case to a Court to inflict more severe punishment, there is nothing arbitrary about it. Section 23(b) of Foreign Exchange Regulation Act. of 1947 is valid. *Shantiprasad Jain v. Director of Enforcement*, A. I. R. 1962 S. C. 1764 1963-2 S. C. R. 29 Section 7 and section 15 and also the preamble of the Rajasthan (Protection of Tenants) Ordinance No. 9 of 1949 which provided relief to tenants settled after 1. 4. 1948 against ejectment were held to be valid. *Sardar Inder Singh v. State of Rajasthan*, A. I. R. 1957 S. C. 510.

553. Bihar Panchayat Raj Act.

Bihar Panchayat Raj Act of 1948 was held to be not discriminatory. *Baldeo Singh v. State of Bihar*, A. I. R 1957 S.C. 612.

554 Rule 65 under Displaced Persons Act.

Rules 65 framed under the Displaced Persons (Compensation & Rehabilitation) Act of 1954, does not suffer from any infirmity on ground of discrimination and are valid: *Mukhan Lal Mathotra v. Union of India*, A.I.R. 1961 S.C. 392, 1961 (1) S.C.R. 120.

555. Exemption of excise duty etc.

Exemption granted to Co-operative Societies of weavers regarding Excise duty on cotton fabrics produced on Power Looms was held to be valid and there was no violation of articles 14, 14 (1) (f) and (g). The relevant rule does not suffer from the vice of excessive delegation of power to exempt : *Orient Weaving Mills v. Union of India*, A.I.R. 1963 S.C. 93

556. Export Control Order.

Power given under Clause 3A (H) of the Export Control Order of 1958 to control 'export' through special or specialised agency or channels was held to be constitutional and valid : *Daya v. Joint Controller*, A.I.R. 1962 S. C. 1796; 1963 2 S. C. R. 73.

557 Bihar Hindu Religious Trust Act.

Bihar Hindu Religious Trust Act was held not to contravene Article 14 *Mhant Motils v. S. P. Sai*, A.I.R. 1959 S.C. 942.

558. Ams Act.

Section 29 of the Arms Act was held to be wholly unconstitutional and void as contravening article 14 while section 19 (f) was held to be valid. It was further held that both the said sections were severable and doctrine of severability was applied - *Jialal v. Delhi Administrations* A.I.R. 1962 S.C. 1781.

559. Mahras District Board Amendment Act 1957 & Kerala Act 4 of 1958.

There is no material difference in the application of the principles to a tax on land and land revenue. Both of them have a reference to the actual potential productivity of land. A particular levy must also have a reference to the income that is actually made. Under section 78 of the Madras District Board's Act (XIV) of 1920 which stands amended by section 3 of the Kerala Act 4 of 1958 the land cesses is to be levied on all lands in the District irrespective of the fact whether they are occupied or unoccupied. Power is given to the State Govt. to exempt certain lands from the operation of the levy. There are no principles laid down by the statute which are to govern the exercise of the power to grant exemption. Inequality is thus writ large on the Act and therefore Act 4 of 1958 enacted by the Kerala Legislature is hit by the prohibition to deny equality before the law contained in Article 14 of the Constitution : *Kunathal v. State of Kerala*, A.I.R. 1961 S.C. 552. Madras District Board (Amendment) Act 1957 infringes Article 19 (1) (f) and is *ultra vires*.

560. Section 5 (7a) Income Tax Act is valid.

Section 5 (7a) of the Income Tax Act under which order of transfer can be made, were held to be not discriminatory. *Panna Lal v. Union of India*, A. I. R. 1957 S. C. 397 ; 1957 S. C. R. 233.

Proviso to section 34 (3) of the Income-Tax Act, 1922 as amended in 1953 is invalid so far as it affects persons other than assessee: *Commr of Income Tax v. Sardar Lakhmar Singh*, A. I. R. 1963 S. C. 1394.

561. State Monopoly.

Equal protection guaranteed by Article 14 is not violated where legislation created State monopoly in a trade: *Saghir Ahmed v. State of U. P.*, A. I. R. 1954 S. C. 728, 1955 S. C. R. 707.

A law which nationalises road transport service, thus creating monopoly is valid and cannot be called into question on the ground that Article 14 is violated. *J. Y Kundal Rao v. State of A. P.*, A. I. R. 1961 S. C. 82; 1961 S. C. R. 642

562. Proceeding taken before Constitution.

Where an enquiry was commenced before coming into force of the Constitution, the validity of the enquiry cannot be questioned on the ground that the procedure then followed was in violation of Article 14. *J. P. Sharma v. State of U. P.*, A. I. R. 1961 S. C. 1245, 1962 1 S. C. R. 151.

563. Proceedings completed before Constitution—Action can be taken.

Where proceedings were completed prior to the Constitution and in respect of undisclosed income relating to the period prior to Constitution, such action cannot be challenged under Article 14 as it has no retrospective effect: *Ranjit Singh v. Commr. of Income-tax*; A. I. R. 1962 S. C. 92.

564. Two kinds of commitment proceedings under section 207/207-A. Cr. P. C. held valid.

Where there are two kinds of commitment proceedings u/s 207 and 207-A of the Criminal Procedure Code, it was held that classification being reasonable cannot be declared unconstitutional - *M. S. Rao v. State of A. P.* A. I. R. 1963 S. C. 927.

565. Presumption of guilt based on possession

Where a presumption of offence having been committed was raised against persons possessing implements for manufacturing liquor it was held that the presumption has reasonable relation to the offence. *A. S. Krishna v. State of Madras*, A. I. R. 1957 S. C. 247.

566. No waiver of Fundamental Right.

There can be no waiver of breach of fundamental rights, which are enacted for benefit of individuals : *Bashashar Nath v. Commissioner of Income Tax*, A. I. R. 1959 S. C. 149.

567. Right of Trial by Jury taken away qua one man only, held to be bad.

Where by a notification a previous notification permitting trial by jury was revoked in respect of accused in a particular case only, it was held that the notification where the trial had not finished till 26.1.1950, was bad : *Dharindra Kumar v. Superintendent*, A. I. R. 1954 S. C. 424, 1955 S. C. R. 224.

568. Working Journalists.

The working journalists are a group by themselves and could be classified as such apart from other employees of newspapers establishments. Therefore, when legislation is made for ameliorating their condition of services there is no discrimination : *Express News papers v. Union of India*, A. I. R. 1958 S. C. 578, 1958 S. C. A. 952.

569. Represented through legal practitioner.

Where certain provisions are made whereby the consent of other party and permission of the tribunal is necessary, before a party can ask to be represented by legal practitioner there is no violation of Article 14 on the ground that such a provision would lead to the result that the party in one case may get legal aid while in the other, they may be deprived of it : *D. P. Joshi v. State* A. I. R. 1955 S. C. 334.

570. Classifications of unions.

Where unions are classified according to the percentage of membership, there is no violation of the equality clause inserted in the Constitution : A. I. R. 1954 S. C. 732.

571. Slums Areas Act 1956.

Where policy has been laid down by the legislature indicating line of action to be followed which is to serve as a guide to the authority taking action under Slums Areas (Improvement and Clearance) Act, 1956, it was held that it does not violate Article 14 and that if the actual order made is beyond the power, then that can be set aside. *Joshiparsad v. Union Territory of Delhi*. A. I. R. 1951 S. C. 1602.

572. Prohibition Laws :

Section 29 of Bombay Prohibition Act 1949 is not invalid in so far as it affects the military and naval messes and canteens, warships and trupships : *F. N. Balsara v. State*, A. I. R. 1953 S. C. 318.

557. Bihar Hindu Religious Trust Act.

Bihar Hindu Religious Trust Act was held not to contravene Article 14 *Mhant Motids v. S. P. Sai*, A.I.R. 1959 S.C. 942.

558. Arms Act.

Section 29 of the Arms Act was held to be wholly unconstitutional and void as contravening article 14 while section 19 (f) was held to be valid. It was further held that both the said sections were severable and doctrine of severability was applied: *Jialal v. Delhi Administrations* A.I.R. 1962 S.C. 1781.

559. Madras District Board Amendment Act 1957 & Kerala Act 4 of 1958.

There is no material difference in the application of the principles to a tax on land and land revenue. Both of them have a reference to the actual potential productivity of land. A particular levy must also have a reference to the income that is actually made. Under section 78 of the Madras District Board's Act (XIV) of 1920 which stands amended by section 3 of the Kerala Act 4 of 1958 the land cesses is to be levied on all lands in the District irrespective of the fact whether they are occupied or unoccupied. Power is given to the State Govt. to exempt certain lands from the operation of the levy. There are no principles laid down by the statute which are to govern the exercise of the power to grant exemption. Inequality is thus writ large on the Act and therefore Act 4 of 1958 enacted by the Kerala Legislature is hit by the prohibition to deny equality before the law contained in Article 14 of the Constitution: *Kunathal v. State of Kerala*, A.I.R. 1961 S.C. 552. Madras District Board (Amendment Act 1957) infringes Article 19 (1) (f) and is ultravires.

560. Section 5 (7a) Income Tax Act is valid.

Section 5 (7a) of the Income Tax Act under which order of transfer can be made, were held to be not discriminatory: *Panna Lal v. Union of India*, A. I. R. 1957 S. C. 397; 1957 S. C. R. 233.

Proviso to section 34 (3) of the Income-Tax Act, 1922 as amended in 1953 is invalid so far as it affects persons other than assessee: *Commr of Income Tax v. Sardar Lakhmir Singh*, A. I. R. 1963 S. C. 1394.

561. State Monopoly.

Equal protection guaranteed by Article 14 is not violated where legislation created State monopoly in a trade: *Saghar Ahmed v. State of U. P.*, A. I. R. 1954 S. C. 728, 1955 S. C. R. 707.

A law which nationalises road transport service, thus creating monopoly is valid and cannot be called into question on the ground that Article 14 is violated. *J. Y. Kundal Rao v. State of A. P.*, A. I. R. 1961 S. C. 82; 1961 S. C. R. 642.

562. Proceeding taken before Constitution.

Where an enquiry was commenced before coming into force of the Constitution, the validity of the enquiry cannot be questioned on the ground that the procedure then followed was in violation of Article 14. *J. P. Sharma v. State of U. P.*, A. I. R. 1961 S. C. 1245, 1962 1 S. C. R. 151.

563. Proceedings completed before Constitution—Action can be taken.

Where proceedings were completed prior to the Constitution and in respect of undisclosed income relating to the period prior to Constitution, such action cannot be challenged under Article 14 as it has no retrospective effect: *Ranjit Singh v. Commr. of Income-tax*, A. I. R. 1962 S. C. 92.

CHAPTER VII

PROHIBITION OF DISCRIMINATION BASED ON RELIGION ETC.

SYNOPSIS

- 579 General
- 580 Article 15 (4) is not obligatory
- 581 Object of article 15 (4) is to remove backwardness
- 582 Object of First Amendment Act 1951
- 583. State includes Legislature and Government
- 584 Backward and more backward — Classification is bad
- 585 Classification based on caste only is bad
- 586 Appointment of Commission, not essential before passing orders under article 15 (4)
- 587 Exemption of Harijans and Muslims from cost of additional police force is bad
- 588 The authority should be within the territory of India
- 589 Who can question the constitutionality
- 590 Discrimination on the basis of place of birth
- 591 Excessive reservation may amount to fraud on the Constitution
- 592 Special provisions for children and women
- 593 Caste
- 594 Only
- 595 Race
- 596 Religion
- 597 Electoral law
- 598 Requirement of capitation fee
- 599 Article 15 and 29 (2)
- 600 Discrimination
- 601 Discrimination should be by an authority within the territory of India.
- 602 Selection of candidates getting less marks is violative of article 15
- 603 Selection after advertisement does not violate article 15
- 604 Discriminate against Meaning of
- 605 Discrimination on the basis of religion only
- 606 Discrimination on the basis of sex

573. Different laws may prevail in different parts.

Article 14 does not hit a law on the ground that the provisions regarding the same subject-matter (such as the scale of dearness allowance) are different in different States. *State of Madhya Pradesh v. G. C. Mandawar*, (1955) 1 S. C. R. 593 ; A. I. R. 1955 S. C. 493.

574. Law not applying to the entire State.

Tenancy legislation cannot be declared invalid on the ground that it did not apply to the entire State. *Kishan Singh v. State of Rajasthan*, (1955) 2 S. C. R. 531 ; A. I. R. 1955 S. C. 795,

575 The Orissa Motor Vehicles Act, 36 of 1947 and the Orissa Amendment Act No. 1 of 1949

These were held to be valid as Article 14 was not violated. The owners of Stage Carriage Services operating on a particular area or route form a separate class. If each one of the same class is governed by the same statutory provisions, no question of discrimination arises. *Ram Chandra Palta v. State of Orissa*, (1956) S. C. R. 28 ; A. I. R. 1956 S. C. 228. Section 4 (1) of the Bengal Criminal Law Amendment (Special Courts) Act 1949, does not contravene Article 14. *Kedar Nath Bajoria v. The State of West Bengal*, 1954 S. C. R. 30 ; A. I. R. 1953 S. C. 404.

576. Bombay Rents Control Act, 1947

Section 4 of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947, was declared to be valid. Similarly section 3-A of the Bombay Housing Board Act, 1941, was also declared valid as none of them infringes Article 14 of the Constitution. *Baburao Shantaram More v. The Bombay Housing Board*, 1954 S. C. R. 572 ;

577. Companies Act, Section 237

See *Naryana v. M. P. Mistry* : A. I. R. 1961 S. C. 29.

578. Punjab Public Premises Act.

The provisions of Punjab Public Premises Act in so far as they enable two different procedures for ejecting tenants from Government lands were held to be invalid and the judgment reported as *The Northern India Caterers Private Ltd. v. State of Punjab*, A. I. R. 1963 Punj 290 was set aside in appeal by Supreme Court.

constitutional powers conferred by article 15(4), especially when the reservation was made to the extent of 68%. It was held that this is inconsistent with article 15 (4) : *M. R. Balaji v. State of Mysore*, A. I. R. 1963 S. C. 649

585. Classification based on caste only is bad.

Where the Mysore Government by an order dated 31st of July, 1962 reserved seats in the Technical Institution for backward castes, it was held that as the classification is based solely on consideration of caste the order is invalid. The other factors were not taken into consideration while reserving seats for the backward classes : *M. R. Balaji v. State of Mysore*, A. I. R. 1963 S. C. 649.

586. Appointment of Commission not essential before passing orders under Article 15(4).

It cannot be said that the State is not competent to make an order under article 15(4), unless the Commission has been appointed by the President under article 340(3). Though the appointment of the Commission by the President was contemplated by the Constitution and its report would be useful in rendering help to the backward classes, yet it cannot be said that the Union or the States have to take action in pursuance of the recommendations made by the Commission : *M. R. Balaji v. State of Mysore*, A. I. R. 1963 S. C. 649.

587. Exemption of Harijans and Muslims from cost of additional police force is bad.

Where cost of additional police force under section 15(5) of the Police Act, was levied in a village and the Harijan and Muslim inhabitants were exempted from the levy, it was held that the exemption violated article 15(1) because there is discrimination on ground of caste or religion : *State of Rajasthan v. Thakur Partap Singh*, A. I. R. 1960 S. C. 1208.

588. The authority should be within the territory of India.

When there is violation of article 15 by an authority under the control of Government of India but which is functioning outside the territory of India though administered by Government of India, the Supreme Court cannot issue a writ against that authority on the ground that there is infringement of article 15 : *K. S. Ramamurthi v. Chief Commr.*, A. I. R. 1963 S. C. 1461.

589. Who can question Constitutionality.

The right guaranteed under article 15 (4) is an individual right and it is only a person who has been himself injured who can move the Court to declare the law to be ultra vires : *Nain Sukhdass v. State of U. P.*, A. I. R. 1953 S. C. 384.

590. Discrimination on the basis of place of birth.

What is prohibited by article 15 is that no discrimination should be made on the ground of place of birth. But where discrimination is made on the basis of religion it cannot be said that law is bad. A rule requiring capitation fee from students not resident of the State concerned cannot be said to be violative of article 15 : *Joshi Case* A. I. R. 1955 S. C. 334.

591. Excessive reservation may amount to fraud on the Constitution.

Reservation of 68 per cent of seats in all technical institutions such as Engineering and Medical Colleges or exclusion of all other candidates if a single candidate from the scheduled tribes was available, may amount to

579. General.

Article 15 is an instance of the equality which is generally stated in Article 14 of the Constitution of India. Article 15 is wider than Article 16 because its scope is not limited to public employment but extends to the entire field of discrimination by State. In one respect its scope is narrower because descent is not included in this Article: *Dashratha v State of A. P.*, A. I. R. 1961 S. C. 564

The scope of this clause is very wide as it is levelled against any State action whether political, civil or otherwise. In view of this, the terms State for the purpose of Article 15 includes local bodies: *Nain Sukh Das v. State of U. P.*, A. I. R. 1953 S. C. R. 1184.

The rights protected by article 15 of the Constitution of India are the personal rights of the citizens and not their rights as members of any caste or community. This Article is one of those constitutional provisions which limit the legislative power and which control the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation: *Gopalan v State*, A. I. R. 1950 S. C. 27. The scope of this article extends not only to the political rights but also to other rights: *Nain Sukh Dass v. State of U. P.*, 1953 S. C. 384. This article prohibits discrimination in all matters including admission into educational institutions.

580. Article 15(4) is not obligatory.

Measures taken by State Government for removing backwardness must be based on an objective approach free from all external pressure and the action should be intended to do social and economic justice and must be taken in a manner that justice is and should be done: *M. R. Balaji v. State of Mysore*, A. I. R. 1963 S. C. 649.

581. Object of Article 15(4) is to remove backwardness.

Article 15 (4) is not an obligatory provision but merely leaves it to the discretion of the appropriate Government to take suitable action if necessary: *M. R. Balaji v. State of Mysore*, A. I. R. 1963 S. C. 649.

582. Object of First Amendment Act 1951.

Article 15(4) was added by the Constitution First Amendment Act 1951, the object being to bring this article in line with article 29. Article 15(4) has to be read as a proviso to article 15(1) and article 29(2). Where an order is justified by the provisions of article 15(4), its validity cannot be questioned on the ground that it violates article 15(1) or article 29(2): *M. R. Balaji v. State of Mysore*, A. I. R. 1963 S. C. 649.

583. State includes Legislature and Government.

It would be unreasonable to suggest that the State must necessarily mean the Legislature and not the Government. The Constitution has adopted suitable phraseology wherever the intention was that the action should be taken by the Legislature and not by Executive: *M. R. Balaji v. State of Mysore*, A. I. R. 1963 S. C. 649.

584. 'Backward' and 'more backward'—Classification is bad.

Where the classification was based as 'backward classes' and 'more backward classes', it was held that such a classification is not warranted by article 15. It was further observed that the order of the Government whereby seats were reserved for backward classes is a fraud on

599. Article 15 and 29 (2).

Article 15 protects all citizens against the State whereas the protection of article 29 (2) extends against the State or any body who denies the right conferred by it. Article 15 protects all citizens against discrimination generally. But article 29 (2) gives a protection against the particular species of wrong namely, denial of admission in the educational institution of the specified kind. Article 15 applies to all citizens irrespective of the fact whether that citizen belongs to a majority or a minority group, while article 29 (2) confers a special right on citizens for admission into educational institutions maintained or aided by the State : *State of Bombay v. Bombay Education Society*, A. I. R. 1954 S. C. 561.

600. Discrimination.

The word discrimination means to make an adverse distinction or to distinguish unfavourably from others : *Kaithi Ranning v. State of Saurashtra*, A. I. R. 1952 S. C. R. 485.

601. Discrimination should be by an authority within the territory of India.

Only that discrimination which is done by an authority which is within the territory of India would be hit by Article 15 of the Constitution of India. Pondicherry which was not within the territory of India would not be included in the term State and any discrimination between the natives and residents of Pondicherry would not be hit by Article 15 : *K. S. Ramamurti v. Chief Commissioner*, 1964 (1) S. C. R. 656; A. I. R. 1963 S. C. 1464.

602. Selection of candidates getting less marks is violative of Article 15.

Where the selection of candidates was made by holding a viva-voce test and where candidates who got less marks were selected it was held that this is in violation of Article 15 of the Constitution of India : *C. Channabasaiah v. State of Mysore*, A. I. R. 1965 S. C. 1293.

603. Selection after advertisement does not violate Article 15.

Where selection of candidates is made after due advertisement it cannot be called violative of Article 15 merely because there are no rules to govern the conditions of service : *B. N. Nagrajan v. State of Mysore*, A. I. R. 1966 S. C. 1942.

604. Discriminate Against-Meaning of.

Discrimination is double edged. To discriminate against one person is to discriminate in favour of other. But inherent in the very notion of every discrimination is a measure of comparison and the language of article 15 should be interpreted in the above light. The words "discriminate against" imply an unfavourable voice affecting the differentiation which the State is making : *Kaithi Ranning v. State of Saurashtra*, A. I. R. 1952 S. C. 123.

605. Discrimination on the basis of Religion only.

Only in cases where religion is made the sole basis of legislative classification, the fundamental rights under the Constitution will stand violated ; and merely because the legislature is competent to make the law as it falls within its sphere, will not validate the law. In an election held after the Constitution came into force, discrimination was sought to be made on the ground of religion. Such a law being repugnant to the Constitution, as it did not take into consideration the Constitutional mandate to the State not to discriminate against any citizen on the ground of religion, was declared void : *Nain Sukhlal v. State of U. P.*, A. I. R. 1953 S. C. 384.

fraud upon the Constitution. Clause 4 of Article 15 only enables the State to make special and not exclusive provisions for the backward classes. The State would not be justified in ignoring altogether advancement of the rest of society in its zeal to promote the welfare of backward classes. Excessive reservation may render nugatory the rights guaranteed to other citizens : *Balaji v. State of Mysore*, A. I. R. 1963 S. C. 649 ; *Chetankumar v. State of Mysore*, A. I. R. 1964 S. C. 1823.

592. Special provision for children and women.

Special provision for children or women under Article 15 cannot be challenged on the ground of violation of Article 14 : *Yusuf v. State of Bombay* 1954 S. C. R. 930. Such special treatment to women may be justified on account of the peculiar social position of women in India.

593. Caste.

A regulation which requires higher qualification for a Brahmin to secure admission into an educational institution would be discriminatory on the ground of caste and would be invalid : *State of Madras v. Champakam* A. I. R. 1951 S. C. 226.

594. Only.

Discrimination which is forbidden by Article 15 is that which is based only on the ground that a person belongs to a particular caste, race or professes certain religion etc. : *Kathi Ranning v. State of Saurashtra*, 1952 S. C. R. 435. The significance of the words only is that other qualifications etc. will not stand in the way of a citizen.

595. Race.

The State shall not discriminate on ground of race : *Partap Singh v. State of Rajasthan*, A. I. R. 1960 S. C. 1208 ; 1961 S. C. J. 143.

596. Religion.

An order under the Police Act of 1861 which declares certain areas as disturbed and makes the inhabitants of those areas bear the cost of additional police violates Article 15 (1) in as much as it exempts Harijans and Muslims from the payment of the fee. Disturbing elements may be found among members of any community or religion just as there may be sane elements among members of that community or religion : *Partap Singh v. State of Rajasthan*, A. I. R. 1960, S. C. 1208 ; 1961 (1) S. C. J. 143.

597. Electoral law.

A law which provides for elections on the basis of separate electorates based on the different religious communities cannot be allowed to stand because it offends article 15.

Where the electoral rolls were prepared on the basis of different religious communities it was held that article 15 (1) is infringed and any election held on the basis of that electoral roll must be declared void : *Nainsukhdas v. Union of India* U. P., A. I. R. 1953 S. C. 384 ; 1953 (1) S. C. R. 1184.

598. Requirement of capitation fee.

Where the rules provide that capitation fee is to be deposited by non-resident students of a particular State it was held that there is no discrimination on ground of place of birth : *D. P. Joshi v. State of M. P.*, A. I. R. 1955 S. C. 334 ; 1955 (1) S. C. R. 1215.

CHAPTER VIII

EQUALITY IN SERVICES

SYNOPSIS

- 607. Equality of opportunity
- 608. Discriminate against
- 609. Reservation for backward classes
- 610. Scope of clause 2 of article 16
- 611. Reservation of posts for different communities bad
- 612. Tenders not accepted-No violation of Article 16
- 613. Different rules for different posts-Article 16 not violated
- 614. Discrimination on ground of descent bad
- 615. Only Class I officers entitled to promotion—Nothing bad
- 616. Retention of junior man-Not bad
- 617. Bar against employment qua certain persons bad
- 618. Reservation for scheduled caste not bad
- 619. Promotion-Dis-similar procedure-No violation of Article 16 when there is proper classification
- 620. Judicial service
- 621. Socially and educationally backward classes
- 622. Education Department
- 623. Termination of temporary servant on account of unsatisfactory work-Article 16 does not apply
- 624. Termination on account of retrenchment of senior Government servants
- 625. Compulsory Retirement
- 626. Carry forward rule
- 627. Rotational system
- 628. Selection after advertisement not bad
- 629. Candidates getting lesser marks cannot be selected
- 630. Three tier system
- 607. Equality of opportunity.

Where all candidates are subjected to the same tests and some of them are selected according to the merits of the candidates it cannot be said that the principle of equality of opportunity enunciated in clause 1 of article 16 is violated. It is open to the appointing authority to lay down qualifications for recruitment to Government offices and to further

606. Discrimination on the basis of sex.

Section 497 of the Indian Penal Code which punishes only men for adultery cannot be said to be violative of article 15 as it discriminates against men on the basis of sex.

Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children by clause 3 of Article 15. Articles 14 and 15 thus read together validate the last sentence of Section 497 I. P. C. which prohibits the woman from being punished as an abettor of an offence of adultery : *Yusuf Abdul Aziz v. State of Bombay*, A. I. R. 1954 S. C. 321.

Ramarao v. State of A. P.; A. I. R. 1961 S. C. 564 : 1961 (2) S. C. R. 931. Article 16 is an illustration of the general rule of opportunity laid down in article 14 with special reference to the opportunity of appointment and employment in Government: *Banarsi Das v. State of U. P.*; A. I. R. 1956 S. C. 520.

615. Only class I officers entitled to promotion—Nothing bad.

Where Income tax Officers were divided into two classes and only class I officers were eligible for promotion to higher posts it was held that there is no discrimination against class II officers: *Kishori Mohanlal v. Union of India*, A. I. R. 1962 S. C. 139.

616. Retention of junior man—Not bad.

Where the services of a senior public servant were terminated and that of a junior person were retained, it was held that there is no violation of article 16 (1): *Union of India v. T. K. More*, A. I. R. 1962 S. C. 630.

617. Ban against employment qua certain persons bad.

Where there was ban against employment of certain person under Government after termination of the services, it was held that this arbitrary imposition of ban violated article 16 (1): *Krishan Chand Nayyar v. Chairman Central Traders Organisation*; A. I. R. 1962 S. C. 602; 1962 (3) S. C. R. 187.

618. Reservation for scheduled caste not bad.

Where a circular was issued by the Railway Board making reservations of selection posts in Railway Service in favour of member of scheduled castes/tribes it was held to be not ultra vires: *G. M. Southern Railway v. Rangachari*, A. I. R. 1962 S. C. 26; 1962 (2) S. C. R. 556.

619. Promotion—Dis-similar procedure—no violation of Article 16 when there is proper classification.

There is no violation of article 16 when a dis-similar treatment was followed in the matters of promotion between teachers of District/Municipal Boards taken over by Punjab Government and between teachers who were already in the employment of Punjab Government: *State of Punjab v. Joginder Singh*, A. I. R. 1963 S. C. 913.

620. Judicial Service.

The selection of junior munsifs when munsifs are to be appointed in the exercise of power by the High Court under Article 235 is not violative of Article 235, 14 and 16 unless it is shown that the case of the petitioner was not considered at all: *High Court Calcutta v. Amal Kumar* (1963) 1 S. C. R. 437; A. I. R. 1962 S. C. 1704.

621. Socially and educationally backward classes.

The word classes is not equal to caste. However if the Government in making classification takes into consideration economic conditions of backward classes there can be objection if their castes are also taken into considerations. However, the order making classification is not bad if castes are not considered. Articles 46, 341, 342 and 15 form one group, when special provisions are made for socially and educationally backward classes: *Chitrakhekha v. State of Mysore* (1964) 6 S. C. R. 368.

622. Education Department.

When schools of the Municipalities and District Boards were taken over by the Punjab Government and their teachers were given the grades and pay of the teachers in Government service it was held by the majority judgment that Articles 14 and 16 were not violated: *State of Punjab v. Joginder Singh* (1964) 2 S. C. R. 169; A. I. R. 1963 S. C. 913.

lay down pre-requisite conditions of appointment which are conducive to the maintenance of proper discipline among the Government servants: *Banarsi Dass v. State of U. P.*, A.I.R. 1956 S.C. 520. Where a civil servant is employed on a special contract and his services are terminated in accordance with the terms of contract article 16 (1) cannot be invoked as there is no discrimination and no denial of equality of opportunity: *Satish Anand v. Union of India*, A.I.R. 1953 S.C. 250.

608. Discriminate against

The words 'discriminate against' have the same meanings as they bear in article 15. It necessarily implies differentiation with a voice of prejudice against particular class of individuals. But if the voice is based upon any of the grounds specified in the article the law or the action taken by the State becomes ipso facto repugnant to the Constitution: *Kathi Ranning v. State of Saurashtra* 1952 S.C. 123.

609. Reservation for backward classes

Only those reservations which are for backward classes can be upheld but where however reservations are made for different communities which are not included in the term backward communities, then such an order will be repugnant to article 16 in so far as it relates to the classes which are not backward: *Venkatramya v. State of Madras*, A. I. R. 1951 S.C. 229.

610. Scope of clause 2 of Article 16.

Where the Madras Government by an order known as Madras Government Communal G.O. fixed the proportion of posts open to each community in a certain manner, it was held by the Supreme Court that as caste and community were the sole grounds for the ineligibility of the person otherwise competent, the order was repugnant to this clause and, therefore, void: *Venkatramya v. State of Madras*, A.I.R. 1951 S.C. 229.

611. Reservation of posts for different communities bad.

Where the rules provided for reserving posts for a public service for various communities, the rule was declared to be illegal, as it violated article 16 of the Constitution: *Venkataraman v. State of Mad.*, A. I. R. 1951 S.C. 318. Where old servants who had resigned and were not amenable to discipline and were excluded from new appointment to new services created by State, it was held that there was no denial of equality of opportunity: *Binarisidas v. State of U. P.*, A. I. R. 1956 S. C. 529.

612. Tenders not accepted—No violation of Article 16.

Where the petitioner used to supply milk to Government on contract and when petitioner's tender for certain year were not accepted, it was held that there is no violation of article 14 or article 16 as the contract to supply cannot be called employment: *C. K. Achutan v. State of Kerala*, A.I.R. 1959 S. C. 490.

613. Different rules for different posts—Article 16 not violated.

Where there were different rules in the matter of promotion for Station Masters and Guards, it was held that the equality between separate and independent classes of employees is not contemplated by article 16 (1) and there is no violation of this article: *All India Station Masters Assn. v. General Manager, Central Railway*, A. I. R. 1960 S. C. 384.

614. Discrimination on ground of descent bad.

Village munsif under Madras Act (3) of 1855 is an officer under the State and section 6 (1) of the Madras Act which discriminates on ground of descent was held to be violative of article 15 (2) of the constitution: *G. A.*

of which consist of direct recruits and half of the promotees. This rotational system does not violate the equality clause. The case of *T. Devadasan v. Union of India*, A. I. R. 1964 S. C. 179 which dealt with carry forward rule was distinguished in the case : *Merryan v. Collector* A. I. R. 1967 S. C. 52. This rotational system would not apply in case there is only one source of recruitment. But if a direct recruit is put before the promotee even though he has come up on a latter date when making promotions to higher ranks, it will be hit by Article 14 as well as 16 of the Constitution of India : *Merryan v. Collector* (Supra).

628. Selection after advertisement not bad.

Where the Government advertises the appointments and the conditions of service of the appointment and makes selection after advertisement there would be no breach of Article 15 or 16 of the Constitution because every body who is eligible in view of the conditions of service would be entitled to be considered by the State. There is no infringement of Article 309 or Articles 14, 15, and 16 if the State Government does not frame rules with regard to a particular service before it is created because as laid down in *Ram Jawaya Kapur v. State of Punjab*, 1955-2 S. C. R. 225 it is not necessary that there must be law in existence before the executive is enabled to function : *B. N. Nagranjan v. State of Mysore*, A. I. R. 1966 S. C. 1942. See also *T. Gajee v. V. Jormon Sirm* 1961-1 S. C. R. 750.

629. Candidates getting lesser marks cannot be selected.

Where the selection of candidates was made by holding a *rivavoc test* and the candidates who got less marks were selected, it was held that this is in violation of Article 16 of the Constitution of India : *C. Channabasavaiah v. State of Mysore* A.I.R. 1963 S.C. 1293.

630. Three tier system.

The three tier system prevalent in Police Force in State of Rajasthan as is applicable for the purposes of promotion from Constable to Head Constable does not contravene Articles 14 and 16 (a) : *Ram Sharan v. Deputy Inspector General of Police*, A. I. R. 1964 S. C. 1559. ; 1964-7 S. C. R. 228.

623. Termination of Temporary servant on account of unsatisfactory work—Article 16 does not apply.

There is no question of violation of Article 16 when a temporary Government servant is found to be not efficient and his services are terminated on account of unsatisfactory work: *Champaklal v. Union of India* (1964) 5 S. C. R. 190; A. I. R. 1964 S. C. 1854.

624. Termination on account of retrenchment of senior Government servants.

The question whether Article 16 is violated because senior servants were ordered to leave while less qualified junior servants are retained as a result of retrenchment will arise in the case of retrenchment and not in the case of termination on the ground of inefficiency: *Champaklal v. Union of India* (1964) 5 S. C. R. 190; A. I. R. 1964 S. C. 1854.

625. Compulsory Retirement.

While determining the validity of rule 285 of Mysore Civil Services Rules 1958 it was held that the compulsory pre-mature retirement of the Government servant in the public interest could not be challenged unless on the material placed before the Court, the order suffers from the vice of malafide: *Shivcharan Singh v. State of Mysore* A. I. R. 1965 S. C. 210.

The three tier system applicable to Police in Rajasthan does not offend Article 14: *Ram Sharan v. Dy. Inspector General of Police* (1965) 1 S. C. J. 749.

626. Carry forward Rule.

What is meant by equality in article 14 is equality among equals. It does not provide for absolute equality of treatment to all persons in utter disregard in every conceivable circumstance of the differences such as age, sex, education and so on. Indeed the aim of this article is to ensure that invidious distinction and arbitrary discrimination shall not be made by the State between the citizens who answer the same description but reasonable classification is permissible.

The carry forward rule which provided for representation in Central services and reservation of vacancies for scheduled castes and scheduled tribes permitting reservations of more than 50 per cent vacancies upto third year was held to be ultra vires of article 14 and 16 of the Constitution of India. This rule permitted a perpetual carry forward of unfilled reserved vacancies in the two years preceding the year of recruitment and provided addition to them of 17½ per cent of the total vacancies to be filled in the recruitment years. If in two successive years no candidate from amongst the Scheduled Castes and Tribes was found to be qualified for filling any of the reserved posts and supposing that in each of these two years the number of vacancies to be filled in a particular service was 100, by operation of the carry forward rule the vacancies to be filled by persons amongst the scheduled castes and scheduled tribes would be 54 as against 46 by persons from amongst the more advanced class. This rule was held to be ultra vires of Article 15: *Devadasan v. Union of India*, A. I. R. 1964 S. C. 179.

627. Rotational system.

Where recruitment to a cadre is from two sources, namely direct and promotees and rotational system is in force, seniority has to be fixed as provided by alternate y fixing a promotee and a direct recruit in the seniority list. There is no violation of the principle of equality before law as contained in Article 16 by following rotational system of fixing seniority in a cadre half

- 654. Using defamatory slogans against Ministers does not undermine security of State
- 655. Section 144 Cr. P.C. does not violate article 19 (1) (a)
- 656. Sedition
- 657. Sections 124 (2) and 505 IPC are constitutional
- 658. U.P. Special Power's Act, 1932, section 3 is unconstitutional
- 659. Punishing an employee for making a speech may violate Article 19 (1) (a)
- 660. Freedom of speech is not violated when a Member of Parliament is detained under D.I.R.
- 661. Right to make peaceful and orderly demonstration
- 662. Strikes even if associated with speeches not protected
- 663. Incitement which may lead to indiscipline not covered
- 664. Section 123(5) of Representation of the Peoples Act, 1951 is valid
- 665. Government should state reasons for confiscating seditious publication
- 666. Getting a book of scientific nature published while under detention
- 667. Religion cannot be insulted
- 668. Employee can be asked not to disclose information

631. Scope of Article 19.

Article 19 guarantees to the citizens the enjoyment of certain civil liberties while they are free. Article 19 pre-supposes that a citizen who claims the protection of article 19 must be enjoying personal freedom at the time of enforcement of this right on which alone the enjoyment of those rights necessarily rest. When a citizen is deprived of his freedom in accordance with the law, there can be no question of his exercising or enforcing the rights conferred in clause (1) of this Article. Articles 20 and 22 secure to all persons citizens and non citizens, certain constitutional guarantees in regard to punishment and prevention of crime. *Gopalan's case*, A. I. R. 1950 S. C. 27. The validity of a law which authorises the deprivation of personal liberty is to be judged by the criteria indicated by articles 21 and 22 and not by article 19: *Ram Singh v. State of Delhi*, 1951 S. C. R. 451.

Observation made by Das J. in *Gopalan's case* 1950 S. C. 88 at 291 that a detainee cannot exercise his right under article 19(1) (a) as he is no longer a free man was held to be not the last word on the subject: See *State of Maharashtra v. P. P. Sanzgiri and others*, Criminal appeal No. 107 of 1965 dated 6-9-1965. In this case restrictions were placed on the detainee in as much as he was not allowed to get a book of purely scientific nature published which he had written while he was under detention. It was held that the refusal to get the book published was violative of article 19(1) (a).

632. Art 19 not exhaustive.

Article 19 is not exhaustive in its enumeration. There may be many other personal liberties which a free man may exercise. Article 19 protects

CHARTER IX

FREEDOM OF SPEECH

(See Chapter XVI on Reasonable Restrictions)

SYNOPSIS

GENERAL

- 631. Scope of article 19
- 632. Article 19 not exhaustive
- 633. Rights under article not absolute
- 634. Article 19 and Article 21
- 635. Article 19 and Article 31
- 636. Rights which are not fundamental
- 637. Infringement of rights by private individuals
- 638. Construction of laws restricting fundamental rights
- 639. Article 19 available to free citizens
- 640. Who is a citizen
- 641. Judgment of High Court cannot violate Fundamental Rights

PRESS

- 642. Freedom of speech includes freedom of press
- 643. Freedom of speech includes circulation
- 644. Freedom of press is not higher than the one which ordinary citizens enjoys
- 645. Excessive and prohibitive burdens cannot be placed on the press
- 646. Advertisement—When can be controlled
- 647. Statute cannot regulate number of pages according to price
- 648. Pre-censorship cannot be imposed
- 649. Freedom of press includes freedom to employ staff
- 650. Obscene—Meaning of
- 651. Obscene literature if proscribed does not violate article 19 (1) (a)

LEGISLATORS

- 652. Legislators enjoy absolute and unfettered powers inside the House
- 653. Freedom of speech under article 19 (1) (a) and article 194

only some of the important attributes of personal liberty and the attributes not enumerated in article 19 but which may be taken as constitutionally guaranteed by article 21. *Gopalan's case*, 1950 S. C. R. 88 : A. I. R. 1950 S. C. 27.

633. Rights under Art 19 not absolute.

None of the rights under article 19(1) is absolute. Each of the sub-clauses are superimposed with restrictions as provided in clause 3 to 6 of article 19. In fact liberty has to be limited in order to be effectively possessed. These restrictions are necessary for the common good of citizens. *Gopalan's case* 1950 S. C. R. 88. In considering the validity of restrictions imposed under the law by the State on the citizen regarding his fundamental rights, it must be remembered that importance is to be given to the right itself which is supreme and fundamental and not to the limitations : *Ram Singh v. State of Delhi*, 1951 S. C. R. 451.

634. Article 19 and Article 21.

Article 19 refers to the rights of citizens in particular set of circumstances i.e. in their free State. This article is not concerned with the question of taking away the basic freedom itself and putting a citizen in confinement. This subject matter is covered by article 21. Article 19 is not applicable to the question of detention of a person preventive, punitive or otherwise : *Gopalan v. State*, A. I. R. 1950 S. C. 27 ; *Ram Singh v. State* A. I. R. 1951 S. C. 270. Where a person is totally deprived of his personal liberty it is article 21 and not article 19 which is applicable. *Ajaib Singh v. State*, A. I. R. 1953 S. C. 10.

For invoking the help of article 19, it is essential that a legislation must hit directly the liberty of a citizen. But where such restrictions or deprivations results from the application of some other law article 19 cannot be made use of. But where a person whose personal liberty is not totally taken away but only some restrictions are placed, then it is article 19 which is applicable. While article 19 says that a citizen shall have the various rights, Articles 21 and 22 are worded in a negative form and purport to enact restrictions on the powers of the State: *Gopalan v. State*, A. I. R. 1950 S. C. 27. *Ram Singh v. State of Delhi*, 1951 S. C. R. 459.

635. Articles 19 and 31.

Where a person is deprived of his property, in entirety or it is required or its possession is taken for public purpose, then such an action falls under article 31 and not article 19. But where there is no total deprivation of property, article 31 does not apply. Article 19 deals with citizens whereas article 31 gives protection to property qua all other persons. Article 31 is different from article 19 in the sense that article 31 deals with the entire field of eminent domain : *Dwarakadas v. Sholapur Spinning*, A. I. R. 1954 S. C. 119. 1954 S. C. R. 671; *Lamaksnya v. Collector*, 1955-2-S. C. R. 988. American decisions on due process clause are not material while considering reasonableness as to restrictions of fundamental rights. *Collector of Customs v. Sanpathu Chetty*, A. I. R. 1962 S. C. 316, 1962 (2) S. C. R. 736.

636. Rights which are not Fundamental.

A citizen has no fundamental rights to "strike". Similarly the right of Franchise cannot be called fundamental. The right to stand as a candidate for election is also not a fundamental right. It is a creature of statute or special law. Although the freedom of contract is fundamental right under the American constitution but it is not so as far Indian Constitution is concerned : *N. P. Ponnuswami v. Returning officer*, A. I. R. 1952 S. C. 64.

637. Infringement of right by private Individual.

This article does not contain any protection against infringement of rights by a private individual. It is only the State against whom a relief can be sought under article 19. It does not mean that a citizen will have no remedy if the right guaranteed under this article is infringed by other citizens. Although remedy under Article 226 may not be available, yet remedy under the ordinary law of the land is available to the aggrieved person. In cases where the State infringes the fundamental right, the remedy both in the ordinary Courts and in the High Courts or the Supreme Court under article 226 and 32 of the Constitution is available: *P. D. Shamadsani v. Central Bank*, A. I. R. 1952 S. C. 59.

638. Construction of laws restricting Fundamental Rights :

Laws which limit fundamental right must be strictly construed. But in the case of municipalities and other local bodies a liberal interpretation must be made in favour of the law. See chapter I.

639. Article 19 available to free citizens.

Article 19 guarantees to citizens enjoyment of civil liberties while they are free and not when they are under detention such as preventive detention. The rights guaranteed by article 19 are not absolute but are liable to be curtailed as mentioned in clause 2 to 6 of article 19. Deprivation of personal liberty is different from restrictions of free movement: *A. K. Gopalan v. State of Madras* A. I. R. 1950 S. C. 27 : 1950 S. C. R. 1951.

640 Who is a citizen.

This article can be made use of by the citizens alone. A Corporation is not a citizen for the purpose of the Constitution and therefore cannot claim the right mentioned in this article. The Supreme Court has observed that assuming that a Company can be a citizen a foreign company cannot claim any right under article 19: *State trading Corporation v. Commercial Law officer*, A. I. R. 1963 S.C. 1811 : 1964 4 S. C. R. 99, *Barium Chemicals v. Company Law Board*, 1966 I. S. C. A. 747.

641. Judgment of High Court cannot violate Fundamental Rights.

The argument that the order of the High Court affects the fundamental rights of the citizens under Article 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decision. When a judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue and then applies the relevant law to the said fact. Whether the findings of fact recorded by the Judge are right or wrong and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the judge takes the matter up before the appellate court but it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19 (1). What the judicial decision purports to do is to decide the controversy between the parties brought before the Court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its decision cannot be said to affect fundamental rights of citizens under Article 19(1). *Narash v. State*, A. I. R. 1967 S.C. 1

PRESS

647. Freedom of speech includes freedom of press.

Clause (1) (a) of article 19 deals with the freedom of speech and expression. It is now a settled law that this sub-clause guarantees also the freedom of the press. It was not considered necessary to specifically mention the freedom of press in this article because it is included in the expression freedom of speech etc: *Romesh Thapar v. State*, A. I. R. 1950 S. C. 129.

643. Freedom of speech includes circulation.

The freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed without circulation, the publication would be of little value. *Romesh Thapar v. State of Madras*, A. I. R. 1950 S.C. 124; 1950 S. C. R. 594.

It is a recognised principle that freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the Courts. For the free political discussion and for the proper functioning of a democratic Government, the tendency of modern jurists is to deprecate censorship. The imposition of pre-censorship on the journal is a restriction on the liberty of the press which is an essential part of speech and expression and the action of the Chief Commissioner of Delhi which imposed such a censorship was held to be violative of article 19 (1) (a). The imposition of pre-censorship amounts to curtailment of liberty of press.

The liberty of the press consists in laying no previous restraint on publications. *Brij Bhushan v. State of Delhi*, A.I.R. 1950 S.C. 129, 1950 S.C.J. 425, 1950 S.C.R. 605; *Virendra v. State of Punjab, Criminal Appeal No. 161 of 1956* decided on 12-1-1961;

644. Freedom of press is not higher than the one which ordinary citizen enjoys.

Article 19 guarantees to all citizens freedom of speech and expression; but this article does not specifically or separately mentions liberty of the press. The Supreme Court as early as 1950 in the case of *Romesh Thapar v. State of Madras* 1950 S.C.R. 594 and *Brij Bhushan v. State of Delhi* 1950 S.C.R. 605 has held that this article includes freedom of press. To the same effect are the observations of Bhagwati J. in *Express Newspaper Limited v. Union of India*, 1959 S.C.R. 12. It should be noted that the freedom of speech as enjoyed by the press does not stand at a higher footing than the freedom of speech which an ordinary citizen enjoys. A non-citizen running a press is not entitled to freedom of speech as the freedom of speech, which is conferred by article 19, is enjoyed only by the citizens: *M. S. M. Sharma v. Shri Krishna Sinha*, 1959 S.C.J. 925; A.I.R. 1959 S.C. 395.

That the citizens of India are only eligible for the protection of article 19 is clear from some of the observations made in latest judgments reported as *Barium Chemicals* 1966-2 S.C.J. 623; A.I.R. 1967 S.C. 295. *State Trading Corporation v. Commercial Tax Officer*, A.I.R. 1963 S.C. 1811.

645. Excessive and prohibitive burden cannot be placed on the

*See Blackston's commentary Vol. IV pages 151-152

Press.

The freedom of press does not mean that it is immune to the general laws. No immunity can be claimed by the press and it would be subject to taxation laws in the same way as ordinary citizens, but laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its rights to choose the instruments for the exercise of freedom or to seek an alternative media, prevent newspapers from being started and ultimately drive the press to seek government aid in order to survive would be hit by article 19: *Express Newspaper Limited v. Union of India*, A.I.R. 1958 S.C. 581, 1959 S.C.R. 12.

646. Advertisement when can be controlled

Advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. An advertisement which is concerned with the propagation of ideas would be covered by the freedom of speech. It cannot be said that the right to publish and distribute commercial advertisement advertising an individual's personal business, is part of freedom of speech guaranteed by the Constitution. Where a certain statute prohibits advertisement commending the efficacy, value and importance of a particular drug or medicine, for the treatment of particular disease, it was held that it cannot be declared void as violating article 19(1) (a): *Hamdard Dawa Khana v. Union of India*, 1960 3 S.C.R. 671.

647. Statute cannot regulate number of pages according to price.

For propagating his ideas a citizen has the right to publish them, to disseminate them and to circulate them either by word or by mouth. This right extends not merely to the matter which he is entitled to circulate but also to the volume of circulation. *Daily Newspaper (Price & page) Order, 1959* was held to be illegal as it restricted the number of pages according to the price charged: *Sakal Papers (P) Ltd. and Others v. The Union of India* 1962 (3) S.C.R. 842.

648. Pre-censorship cannot be imposed.

The liberty of the press consists in laying no previous restraint on publications. *Brij Bhushan v. State of Delhi*, A.I.R. 1950 S.C. 129, 1950 S.C.J. 425, 1950 S.C.R. 605.

649. Freedom of press includes freedom to employ staff.

The regulation of the conditions of service of employees of a press cannot be said to be violative of Article 19 (1) (a). Freedom of press would, however, be violated if there is interference with the freedom of employment. Freedom of press involves freedom of employment or non-employment and includes freedom from restriction in respect of employment of editorial staff: *Express New Papers v. Union of India*, A.I.R. 1958 S.C. 578.

650. Obscene.

The word 'obscene' has not been defined in the Indian Penal Code. This delicate task of how to distinguish between that which is artistic and that which is obscene has to be performed by Courts and in the last resort this is to be done by the highest Court of the land i. e. the Supreme Court. The test must obviously be of a general character, but, at the same time, it must admit of just application from case to case by indicating a line of demarcation not necessarily sharp but sufficiently distinct to distinguish between that which is obscene and which is not. Treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without there being something more. The Supreme Court observed 'it is not necessary that the angels and saints of Michael Angelo should be made

to wear to breeches before they can be viewed". The test is whether the tendency of the matter charged as obscene is to the deprave and corrupt those whose minds are open to such immoral instances and into whose hands a publication of this sort may fall. *It is not necessary in order to determine whether a book is obscene or not to compare it with other books. Where obscenity and art are mixed, in such a way that obscenity is so trivial and insignificant and art has a preponderating affect, it can be ignored: *Ranjit S. Udeshi v. State of Maharashtra*, A. I. R. 1965 S. C. 881; 67 Bom. L. R. 506; 1965 1 S. C. W. R. 78.

651. Obscene literature if proscribed does not violate Article 19

(1) (a).

Article 19 of the Constitution of India guarantees complete freedom of speech, but also makes an exception in favour of existing laws which impose restrictions on the ground of decency or morality. The word 'obscene' according to the dictionaries may mean something offensive to modesty or decency. The cherished right which our democratic Constitution confers on the citizens i.e. freedom of speech and expression, is meant for the expression of free opinion to change political or social conditions or for the advancement of human knowledge. This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public. In this case the book named 'Lady Chatterly's Lover' (unexpurgated edition) was held to be obscene and the ban imposed on its sale was held to be not violative of article 19 (1) (a): *Ranjit D. Udeshi v. State of Maharashtra*, A. I. R. 1965 S. C. 881 67 Bom. L. R. 506 : 1965 1 S. C. W. R. 778.

652. Legislators enjoy absolute and unfettered freedom inside the house.

The freedom of speech, which the Legislators enjoy is absolute and unfettered. If a legislator exercises his right of speech in violation of for example article 211, he cannot be held liable in any Court. Similarly, if a legislator violates any of the fundamental rights guaranteed by part III of the Constitution in the course of his speech in the Legislative Assembly, he would not be answerable for the said contravention in any Court. If the impugned speech amounts to libel or becomes actionable under any other provisions of the law, immunity has been conferred on him from any action in any Court. The speaker may take any appropriate action but no other action can be taken against the legislator. This freedom of speech is literally absolute and unfettered. *Idre : Constitution of India*, A. I. R. 1963 S. C. 745 ; 1963 1 S. C. J. 847; 1965 1 S. C. A. 441.

653. Freedom of speech under Article 19 (1) (a) and Article 194 is different.

Freedom of speech which is given to the Legislators under article 194 is subject to the provisions of the Constitution. While interpreting this clause, it is necessary to emphasise that the provisions of the Constitution subject to which freedom of speech has been conferred on the Legislators, are not the general provisions of the Constitution, but only such of them as relate to the regulation of the procedure of the Legislature. Clause 1 of article 194 confers on the Legislators specifically the right of freedom of speech subject to the limitation prescribed by its first part. It would thus appear that by making this clause subject only to the specified provisions

*In this case the opinion expressed by Cockburn C. J. reported as 1863 3 Q. B. 360 was approved.

of the Constitution, the Constitution makers wanted to make it clear that they thought it necessary to confer on the Legislators freedom of speech separately and in a sense independently of article 19 (1) (a). If the object was to confer only that right which is contained in article 19 (1) (a), it would have been redundant to add or express the same thing again in article 194. In re : *Constitution of India*, A. I. R. 1965 S. C. 745 ; S. C. J. 847, 1965 1 S. C. A. 441.

654. Using defamatory slogans against Ministers does not undermine security of State.

Where members of a procession shouted defamatory slogans against Ministers of Punjab State and proceedings were launched under Punjab Security of the State Act, 1939, it was held that these statements could not be said to undermine the security of the State or friendly relations with foreign States. Public men should ignore such vulgar criticism and abuses hurled against them rather than give importance to the same by prosecuting the person responsible for the same. "Those who fill a public position must not be too thin skin in a reference to comment made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust, yet they must bear with them and submit to be misunderstood for a time. Whosoever fills the public position renders himself open their too. He must accept an attack as a necessary though unpleasant, appendage to office." In this case the prosecution launched against the members of the procession was held to be not covered by article 19 (2). *Kartar Singh v. State of Punjab*, 1956 S. C. R. 476.

655. Section 144 Criminal Procedure Code does not violate Article 19 (1) (a)

Section 144 Criminal Procedure Code does not violate article 19 (1) a. Section 144 of the Criminal Procedure Code which prohibits the assembly of 5 persons and making of speeches, though absolute, is not violative of article 19(1) (a) as these powers are to be used only for a temporary purpose. This power is to be exercised by responsible Magistrates who are to act in a judicial manner. Since the judgment has to be of a Magistrate, it can be safely assumed that the power will be exercised legitimately and honestly. The mere possibility that the power may be abused is not sufficient to declare a law void : *Babu Lal v. State of Maharashtra*, 1951 (3) S. C. R. 423. The earlier decision reported as *State of Madras v. V. G. Rose*, 1952 (2) S. C. R. 597 was relied upon in the case.

656. Sedition.

Sedition embraces all those practices whether by word, deed or writing which are calculated to disturb the tranquility of the State and lead ignorant person to subvert the Government. It will cover any attempt to bring into hatred or contempt the Houses of Parliament, the Constitution, to raise discontent among people or promote hostility between various classes of people. *Babu Lal v. State of Maharashtra*, A. I. R. 1951 S. C. 884 : 1961-3 S. C. R. 423. Although sedition as such cannot be made a ground for directly restricting freedom of a citizen, the validity of section 124 A of the Indian Penal Code under which imprisonment is awarded as a punishment of sedition, is not affected by this article. *Ranjilal v. State of U. P.*

* See The observations made by Cockburn C. J. in *Symour v. Butterworth* 1862, 3 F & F 372.

A. I. R. 1955 S. C. 545. A question may sometime arise as it did in *Kartar Singh v. State of Punjab*, A. I. R. 1956 S. C. 541 as to whether criticism of a Minister is sedition or not. The appellants in this case were convicted on the ground that utterances of the persons who took out a procession against the Minister undermined public order, decency or morality and amounted to defamation. The Supreme Court on appeal negatived all the contentions levelled against the appellants and it was said that the persons who used abusive language belonged to that class of society where such vulgar abuses were freely indulged in and that they hardly had any effect on the persons hearing them. Therefore, the question of undermining decency or morality did not arise. As to the public order, it was found from evidence that people were not excited to such a degree which could lead to a riot.

657. Sections 124 (a) and 505 I. P. C. are constitutional.

A statement which leads to public mischief and which is penalised as seditious under sections 124(a) and 505 of the Indian Penal Code, cannot be called violative of article 19(1) (a). The explanation which finds place in section 124 (a) makes it abundantly clear that criticism of public measures or comments on government action, however, strongly worded, should be within reasonable limits. It is only when the words uttered tend to create public disorder and disturbance of law that the law steps in to prevent such activities in the interest of public order. Viewed in this light, the sections cannot be called as violating freedom of speech: *Kidar Nath v. State of Bihar*, A. I. R. 1962 S. C. 955; 1962 Supp. 2 S. C. R. 769.

658. U. P. Special Powers Act 1932, Section 3 is unconstitutional.

U. P. Special Powers Act 1932 which imposed restriction on freedom of speech particularly section 3 of this Act has no proximate relation or connection with public orders sought to be protected and the object sought to be achieved. This section was held to be violative of the freedom guaranteed by article 19(1) (a) and was consequently struck down as unconstitutional: *Superintendent Central Prison, Faizalgarh v. Ram Manohar Lohia*, 1963 (2) S. C. R. 821

659. Punishing an employee for making a speech may violate Article 19 (1) (a).

Where a civil servant made certain speech at the prize distribution ceremony arranged by a certain Society which was not approved by the Government and where action was taken under Civil Services (Classification, Control and Appeal) Rules and even increment was stopped for a period of three years, it was held that the order of punishment was hit by article 19(2) which speaks of laying down certain reasonable restrictions: *Javali v. State of Mysore*, 1962 (1) L. L. J. 134.

660. Freedom of speech not violated when member of Parliament is detained under D. I. R.

Where an order of detention was passed under Defence of India Rules against a member of Parliament, which was valid and which prevented him from attending the session of Parliament, it was held that no complaint can be made regarding the violation of article 19 (1) (a) as there was no occasion for the exercise of that right: *K. Anadha v. Chief Secretary of Government Madras*, judgment dated 27-12-1965 in Writ Petition 47 of 1965.

661. Right to make peaceful and orderly demonstrations.

A demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is a communication of one's ideas to others. A form of speech may be made by signs, for example when a dumb person makes certain signs in order to make himself understandable, it would come within the expression speech. These forms of demonstration which are peaceful and which communicate the ideas of a group are protected by article 19 (1) (a) and (b) : *Kameshwar v. State of Bihar*, A. I. R. 1962 S. C. 1166.

662. Strikes even if associated with speeches is not protected.

Sections 3, 4 and 5 of the Essential Services Maintenance Ordinance, 1960, which prohibit the holding of strikes on the part of employees is not violative of article 19 (1) (a) & (b). The Constitution does not confer any fundamental right on the citizens to hold strikes. The mere fact that the acting in furtherance of the strike took the form of speeches or demonstrations would not make any difference. The earlier decision given in *All India Bank Employees Association v. National Industrial Tribunal Bombay* 1962-3 S. C. R. 269 and *Kameshwar Prasad v. State of Bihar*, 1962 Supp. (2) S. C. R. 369 were considered in this case and were distinguished. The case of *Ghosh v. Joseph*, reported as 1963 Supp. 1 S. C. R. 369 was also considered in the case ; *Radhe Shyam v. Post Master General, Nagpur*, A. I. R. 1965 S. C. 311 ; 1964-7 S. C. R. 403.

663. Incitement which may lead to indiscipline is not covered.

The provisions of Ppsu Police (Incitement to Disaffections, Act) 1953 which provided for penalty for the breach of this provision was held to be constitutional. The police service is an arm of State and indiscipline on the part of its members may result in threat to public order. If a member incites, by making use of his tongue or otherwise, other members which may result in breach of discipline that action cannot be saved by article 19(1)(a). The decision given in *Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*, 1960 2 S.C.R. 121 was relied upon : *Dalhir Singh v. State of Punjab*, 1962 Supp- 3 S.C.R. 25.

664. Section 123 (5) of Representation of the Peoples Act is valid.

Section 123 (5) of the Representation of the Peoples Act 1951 which lays down certain restrictions in the matter of making speeches which may amount to false statements or which may tend to arouse feeling of separation between various communities are not violative of article 19 (1) (a). These sections merely prescribe conditions which must be observed if a citizen wants to enter Parliament. The right to stand as a candidate is a special right and is a creation of a statute and can only be exercised in accordance with the conditions laid down by the statute : *Jammuna Prasad v. Mukhariya and others*, 1955 (1) S.C.R. 688.

665. Government should state reason for forfeiture of seditious publication.

Where the Government does not state any reason for the forfeiture of seditious publication, the order of forfeiture cannot be sustained and is liable to be set aside as it violates freedom of speech and expression : *Harnam Dass v. State of Uttar Pradesh*, 1962 (2) S.C.R. 487.

666. Getting a book of scientific nature published while under detention.

The detainee wrote a book of purely scientific interest. The Government was requested to publish the same but this request was declined by

the Government on the ground that the detainee loses all his liberty when his right to speech is suspended during the pendency of emergency. The shelter was also taken of the Bombay Conditions of Detention Order 1957 and particularly of Rule 17 (iii) of the order which relates to censorship of the letters of the security prisoners. It was argued that freedom to publish being a part of freedom of speech and expression therefore there exist no right to get the manuscript published. But as the liberty of the detainee was restricted by way of rule 0 of Defence of India Rules and Orders and publishing of a book of scientific interest has nothing to do with of State activity the Government cannot refuse to get the same published. *State of Maharashtra v. Prabhakar Paudurany Sangri* Cr P 107/1963 decided on 6th on November 1963 (Supreme Court)

667 Religion cannot be insulted

Where a law prohibits insult to religion it would be absurd to suggest that it violates article 19 (1) (a). *Ramji Lal Modi v. State of U P*, 1957 S C R

668 Employee can be asked not to disclose information

Where a government servant is prevented from disclosing information which he received in the course of his duties it cannot be said that this violates article 19 (1) (a). *Hameshwar Prasad v. State of Bihar*, A I R. 1963 S C 1166

CHAPTER X

FREEDOM OF ASSEMBLY

(See Chapter XVI on Reasonable Restriction)

SYNOPSIS

- 669. General
- 670. Assembly must be peaceable
- 671. Right to public meeting
- 672. Demonstration—What is
- 673. Demonstration cannot be banned
- 674. Section 144 Cr. P. C. does not violate article 19(1)(b)
- 675. Anticipatory restrictions can be imposed
- 676. Government servants and article 19 (1) (b)
- 677. Essential Services Maintenance Ordinance, 1960 does not violate article (1) (b)
- 678. Processionist using defamatory language against a Minister

669. General.

The very idea of a Republican Government implies a right on the part of the citizens to meet peacefully for consultation in respect of public affairs and urge their grievances. Article 19 clause 1 (b) of the Indian Constitution gives to the citizens of India the right to assemble peaceably and without arms. Thus there are three main restrictions on this right. First, the assembly must be peaceful, secondly it must be unarmed and thirdly the restriction so imposed is on the ground of public order.

The right to take procession along a high way has not been expressly made a fundamental right under the Constitution, but there is no doubt that this may be considered as included in the right of free assembly guaranteed by sub clause (b) of article 19 clause 1. The right of taking procession along a high way can also be regarded as the special aspect of the right to move freely throughout the territory of India. See *Babu Lal v. State*, 1961 3 S. C. R. 423.

670. The Assembly must be peaceable :

One of the restrictions imposed upon the right to freedom of assembly is that it must be peaceful. Section 127 of the Criminal Procedure Code authorises the Magistrate or the police not only to disperse an unlawful assembly but also a lawful one also, if it is likely to cause disturbance to the peace. If a speaker passes the bound of argument or persuasion and uses provocative language at a public place, and the audience shows signs of violence, the Police may if it has no other practical means of controlling the masses not only disperse the meeting but also arrest the speaker if he refuses to stop after a proper warning.

* In America it has been held that where there is nothing unlawful in the purpose of the meeting it does not become unlawful merely because other people are excited by it to commit a breach of peace, but nevertheless the authorities are competent to disperse a lawful meeting if there is any danger to the peace and tranquility: *Kameshwar v. State*, A. I. R. 1962 S.C. 1166, *Ghosh v. Joseph*, A.I.R. 1963 S.C. 813.

671. Right to Public Meeting.

Under the Constitution, though not specifically mentioned, citizens have the right of public meeting. A restriction of this right for example as in the case of Section 126 of Representation of the People, Act of 1951 which forbids public meetings on the date of election would be upheld being in the interest of public order. The public meeting can be held at a private premises or at a public place. So far as the public place is concerned, under common law no body has the right to hold meetings at such places. The privilege of a citizen to use the streets and paths for the communication of views on national questions, can be regulated in the interest of all. This right is not absolute and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order. At the same time, this right should not be abridged or denied under the guise of a regulation. †

A statute which empowers an official to grant or refuse permit for the holding of public meetings entirely according to his own personal will, has been declared to be invalid. But where a Municipal authority asked for licence or imposed other regulations, in order to prevent confusion which may arise by overlapping parades and processions, it was held that such regulation and requirement was fair and undiscriminating: See *Babu Lal v. State of Maharashtra*, 1961-3 S. C. R. 423.

672. Demonstration-What is.

A demonstration is defined in the Concise Oxford Dictionary as an outward exhibition of feeling, as an exhibition of opinion on political or other question especially in a public meeting or procession. In Webster it is defined as a public exhibition by a party, sect or society as by a parade or mass meeting. Broadly it may be stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression because speech need not be vocal since signs made by a dumb person would also be a form of speech. A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles.

It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Article 19 (1) (a) and 19 (1) (b). It is needless to add that from the very nature of things a demonstration may take various forms, it may be noisy and disorderly for instance stone throwing by a crowd may be cited as an example of violent and disorderly demonstration and this would not obviously be within Article 19 (1) (a) or

* See *Freiner v. New York* (1951) 340 U. S. 315

See *Betting v. Gillons* (1882) 9 Q.B.D. 308 and *O' Kelly v. Marway* 1883 14 IV 105.

† See *Hage v. Committee* (1942) 307 U. S. 493 *Cox v. New Hampshire* (1944) 312 U. S. 569.

(b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances: *Kameshwar Prasad v. State of Bihar*, A. I. R. 1962 S. C. 1166.

673. Demonstrations cannot be banned.

Rule 4 (a) of the Central Civil Services (Conduct) Rules, 1955, which prohibited holding of demonstrations in any form was held to be violative of article 19 (1) (b). The said rule however, was held to be constitutional in so far as it prohibited the holding of strikes. The fact that a demonstration was organised in connection with a strike does not mean that the person who takes part in it loses his right under the above article. The charges that a particular person took active part in the preparations made for the strike have no relevancy. Right to make demonstration, which is peaceful and orderly, would fall within the freedom guaranteed by article 19 (1) (b): *Kameshwar Prasad v. State of Bihar*, 1 L. R. 42 Pat, 259; A. I. R. 19 2 S. C. 1166; *O. K. Ghosh v. E. X. Joseph*, 1933 Supp. 1 S. C. R. 789; 66 Bom. L. R. 93; A. I. R. 1963 S. C. 812.

674. Section 144 Cr. P. C. does not violate article 19 (1) (b).

Section 144 Cr. P. C. in so far as it prohibits the holding of meetings is not violative of freedom of assembly. Mere omission on the part of the District Magistrate to make the exemption clause in wide terms regarding holding of processions in the order of prohibition under section 144 Cr. P. C. would not vitiate the order on the ground that it places unreasonable restrictions on certain fundamental rights of the citizens. It would be extremely difficult for a Magistrate to differentiate between members of public who want to take out peaceful processions and others who do not want to. If any member of the public wants to take out a procession which is not covered by the exception, he can move the District Magistrate and apply for modification of the order. The satisfaction of the Magistrate as to the necessity of promulgating an order under Section 144 Cr. P. C. is not made entirely subjective by the section. A person who is affected has got a right to challenge the order if it is made *ex parte* and where such a challenge is made the Magistrate concerned has to give an early opportunity to him to show cause against the order. The decision of the Magistrate in such a case would be judicial one. On account of this provision which enables the citizen to show cause, it cannot be said that section 144 confers wide and arbitrary powers on the Magistrate which are restrictive of fundamental rights: *Habu Lal v. State of Maharashtra*, 1961 3 S. C. R. 423; (1961) 1 S. C. J. 524; A. I. R. 1961 S. C. 884.

675. Anticipatory restrictions can be imposed.

It is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining law and order. Section 144 Cr. P. C. is one instance where such an anticipatory order can be passed. Public order has to be maintained and there is nothing wrong if precautions are taken in advance to achieve that end. Moreover, clause 2 of article 19 enables the State to place reasonable restrictions. Some of the objects which are to be secured by passing an order under Section 144 is to prevent obstruction, annoyance, injury etc. Though there is no express mention in Section 144 of the Cr. P. C. that the Magistrate is to hold an enquiry before passing an order under that section, but this is no ground for declaring the section void

because it is reasonable to assume that the authority who has been given the power will exercise that power in a judicial way: *Babu Lal v. State of Maharashtra*, 1961, 3-S. C. R. 423 ; 1961 1 S. C. J. 524 ; A. I. R. 1961 S. C. 884.

676. Government servant and article 19 (1) (b).

In the interest of integrity and discipline in the services, government is competent to prohibit government servant from criticising in public any policy which is pursued by the government but the restriction will be void if it is not proximately related to any of the grounds of restrictions covered by clause 2 of article 19 : *Kameshwar v. State of Bihar*, A. I. R. 1962 S. C. 1166; *Ghosh v. Joseph*, A.I.R. 1963 S.C. 812.

677. The Essential Services Maintenance Ordinance 1960 does not violate article (1)(b).

A civil servant has no fundamental right to go on a strike and if action is taken against a civil servant for taking part or acting in furtherance of an illegal strike, it cannot be said that there is violation of freedom of Assembly : *Radhe Shyam v. Post master General*, (1964) 7 S. C. R. 403. In this case the earlier decision given by the Supreme Court in *All India Bank Employees Association v. National Tribunal, Bombay*, 1962-3 S.C.R. 269 was relied upon and *Kameshwar Prasad v. State of Bihar*, 1962 Supp. 2 S.C.R. 369 was distinguished.

Rule 4 (a) of the Central Civil Services (Conduct,) Rules 1959 in the form in which it now stands prohibited any form of demonstration. It was held that the rule is invalid to the extent it prohibits the holding of any form of demonstration but in so far as the rule prohibits strike it cannot be struck down for the reason that there is no fundamental right to resort to a strike. The fact that the demonstration in which an employee took part were organised in connection with the strike, does not mean either in law or in fact that the employee participated in the strike itself : *O. K. Ghosh v. E. X. Joseph*, A. I. R. 1963 S.C. 812.

678. Processionist using defamatory language against a Minister

Where members of a procession shouted defamatory slogans against Ministers of Punjab State and proceedings were launched under Punjab Security of the State Act, 1959, it was held that these statements could not be said to undermine the security of the State or friendly relations with foreign States. Public men should ignore such vulgar criticism and abuses hurled against them rather than give importance to the same by prosecuting the person responsible for the same. "Those who fill a public position must not be too thin skinned in reference to comment made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust, yet they must bear with them and submit to be misunderstood for a time. Whosoever fills the public position renders himself open thereto. He must accept an attack as a necessary though unpleasant, appendage to office". In this case the prosecution launched against the members of the procession was held to be not covered by article 19 (2) : *Kartar Singh v. State of Punjab*, 1956 S. C. R. 476.

CHAPTER XI

FREEDOM OF ASSOCIATION

(See Chapter XVI on Reasonable Restriction)

SYNOPSIS

- 679. General
- 680. Right to trade unionism
- 681. Right to strike
- 682. Right to collective bargaining
- 683. Secret association
- 684. Employee cannot be dismissed for joining an Association
- 685. Society cannot be declared illegal by merely issuing a notification
- 686. Law may ban an association in the good of society
- 687. Banks may not disclose secret reserves
- 688. Right to form association can be regulated
- 689. Restriction upon the freedom of association
- 690. Law should lay down principles for the guidance of Executive
- 691. Regulation of supply and purchase
- 692. Classification of unions can be made
- 679. General.

The freedom of association i. e. to form political parties to discuss questions of public importance and canvass for the acceptance by the Government in power of alternative solutions, are as much fundamental as is free discussions and freedom to meet for consultation in a democratic set up.

Clause 1 (c) of article 19 deals with the above mentioned right. Freedom of association includes the right to form companies, partnership societies and trade unions: *Raja Kulkarni v. State of Bombay*, 1954 S. C. R. 384. This freedom necessarily implies the right to refuse to belong to any association or union if a person so desires. Thus a rule under which an employee is asked to become member of a particular society, would be void. The word "form" does not merely mean the commencement of the association but it includes also the right of continuance: *State of Madras v. V. G. Row*, A. I. R. 1952 S. C. 196; 1952 S. C. R. 597.

But in India the Supreme Court has held that freedom of association which is conferred on the citizens of India cannot be made use of for the purpose of collective bargaining by way of going to strike or other such actions : *All India Bank Employees Association v. The National Industrial Tribunal*, A. I. R. 1962 S. C. 171.

683. Secret Association.

An order terminating the services of a Railway employee on the ground that he was member of the communist party cannot be declared void because the order did not prevent him from continuing to be a communist. His fundamental right is to form association but he has no fundamental right to be continued in the employment of the State. *P. Balakotiah v. Union of India*, A. I. R. 1959 S. C. 232. Where the teachers were not allowed to join societies other than the officially recognised, it was held to be unconstitutional and unwarranted interference with the right conferred by article 19 clause 1 (c). A right to form a union does not carry with it a right to represent when there is an industrial dispute. The restriction imposed on the freedom to form association must not only be in the interest of public order or morality but also be reasonable. A right which is made illusory by preventing the union from doing anything in the interest of the members would be invalid under clause 1 (c) : *Kulkarni v. State*, A. I. R. 1954 S. C. 73; 1954 S. C. R. 381.

684. Employee cannot be dismissed for joining an Association.

It is the fundamental right of every citizen to form Association. An employer cannot dismiss his employee solely on the ground that the employee has joined a trade union. It is his fundamental right and it would be wrong to suggest that the mere exercise of the said right would incur dismissal from service in private employment : *Assam Oil Company Limited v. Its Workmen*, 1960, 1 L. L. J. 587. Where the services of a government servant were terminated not because that the government servant was a communist or a trade unionist but because the civil servant was engaged in subversive activities, it was held that this order of termination of services contravened article 19(1) (c). *P. Balakotiah v. The Union of India and others*, 1959 S. C. R. 1052; A. I. R. 1959 S. C. 232 : *Messers Anrit Dhara Pharmacy v. Manohar Lal Velecha*, Civil Appeal No. 24 of 1962 decided on 7-12-1962.

685. Society cannot be declared illegal by merely issuing a notification.

A law which enables the State to declare Associations illegal by the mere issuing of a notification violates article 19 (1) (c). Where by a Government order a registered society was declared as unlawful association under Section 16 of Criminal Law Amendment Act 1908, it was held that the scope of the provisions of the Act was not covered by reasonable restrictions as contemplated by article 19 and, therefore, the action taken was declared to be unconstitutional and void : *State of Madras v. B. G. Row* A. I. R. 1952 S. C. 196; 1952 S. C. R. 597.

686. Law may ban Association in the good of Society.

Discussing the provisions of chapter III of the Forward Contracts (Regulations) Act of 1952, it was held by the Supreme Court that Chapter III does not violate article 19(1) (c) of the Constitution. It was held that the object of the law was to prevent the evil consequences of undesirable speculations : *Raghuraj Dyal Jai Prakash v. The Union of India*, 1962 (3) S. C. R. 547.

687. Banks may not disclose secret reserves.

The law giving protection to the Banks from disclosing information about secret reserve was held to be valid. Discussing sections 34-A of the Banking Companies Act, 1949, it was held that there was no violation of article 19(1) (c) or article 14 of the Constitution: *All India Bank Employees' Association v. The National Industrial Tribunal*, 1962 (3) S. C. R. 269; A. I. R. 1962 S. C. 171.

688. Right to form Association can be regulated.

Article 19 (1) (c) gives right only to form Associations or Unions and the right relates only to the activities of the same. The steps which the Associations like still to take for achieving their object can be regulated by law which cannot be tested under article 19(4): *All India Bank Employees' Association v. The National Industrial Tribunal*, 1962 (3) S. C. R. 269, A. I. R. 1962 S. C. 471. An employee cannot be dismissed on the ground that he has joined an Association or a labour union because the right to form Associations and Labour Unions is guaranteed by article 19(1) (c). *Messrs Amrit Dhara Pharmacy (P) Ltd. v. Manohar Lal Valecha*, This decision was given in Civil Appeal No. 211 of 1962 which was decided on the 7th December, 1962.

689. Restriction upon the freedom of association.

Freedom of association is also subject to restriction as is the case with other rights. But the restrictions must be reasonable. It would be an unreasonable restriction to compel employees to take previous permission before becoming members of a particular union. Similarly where law imposes a restriction on the union on the ground that a union shall not be entitled to represent its members in an industrial dispute unless the union is approved by the administrative authority at his absolute discretion cannot be sustained. Similarly, no body can be compelled to become member of a Government's sponsored union: See *Raghubar v. Union of India*, A. I. R. 1962 S. C. 263.

The words public order must have the same meaning in both clauses i.e. clause 2 and 4 of article 19.

In clause 2 public order means public peace safety and tranquility. The meaning given above is to be made applicable while interpreting clause 4 of article 19. A wider meaning cannot be given to the term public order while interpreting clause 4. In order to sustain a restriction it must be proved that there exists some relationship between the restriction and the public order and this relationship must be direct and proximate: *O. K. Ghosh v. T. S. Joseph*, A. I. R. 1963 S. C. 812.

690 Law should lay down principles for the guidance of executive.

Where the law contemplated preventive actions against Gundas and there was absence of any guidance or assistance in the statute in deciding as to who could be put in the category of Gundas, it was held to be bad. Thus Sections 4 and 4 A of the C. P. & Berar Gundas Act were held to contravene article 19 (1) (c) of the Constitution and the whole Act was declared to be invalid. An Act must provide safeguards against capricious and malicious exercise of power: *State of M. P. v. Baldeo Prasad*, A. I. R. 1961 S. C. 293; 1961 S. C. R. (1) 970.

691. Regulation of Supply and Purchase.

Discussing the notification dated 27-9-1954 issued under the U. P. Sugar Cane (Regulation of supply and purchase) Act [34 of 1953] it was

held that the same did not contravene article 19 (1) (c) because there was nothing in it which compelled a cane grower to become a member of the Cane Growers, Co-operative Society or did not allow a member of the same from resigning from it or from selling his crops any where he liked. Both the Act and the Notification were found to be valid : *C. Tikka Ramji v. The State of U. P.*, 1956 S. C. R. 693 : A. I. R. 1956 S. C. 676.

692. Classification of Union can be made.

The provision of the Bombay Industrial Relations Act, 1946 which provides that a Union may be registered as a representative Union if it has a membership of not less than 15 percent of the total number of employees employed in any industry in any local area, and if a Union has a membership of less than 15 percent but not less than 5 percent, it can be registered only as a qualified Union, was held not to violate and infringe fundamental rights of the workers to form Associations or Unions guaranteed to them under article 19 (1) (c). The classification of Unions as representative and qualified according to the percentage of membership and giving the right to Unions with membership of not less than 15 percent alone to represent the worker was held to be a reasonable classification not infringing equality before the law or the fundamental right enshrined in article 19 (1) (c) : *Raja Kulkarni v. The State of Bombay*, 1954 S. C. R. 334.

CHAPTER XII

FREEDOM OF MOVEMENT

(See Chapter XVI on Reasonable Restrictions)

SYNOPSIS

- 693. General
- 694. Throughout the territory of India
- 695. Right to move freely
- 696. Subjective satisfaction
- 697. Person can be evicted from market area if he does not possess a licence
- 698. Police Regulations-Domiliary visit
- 699. Watch on movements
- 700. Externment and internment orders
- 701. Restrictions and procedural law
- 702. Restrictions of entry into India
- 703. Grounds of restrictions
- 704. Suppression of Immoral Traffic in Women and Girls Act 1956 does not violate Article 19 (1) (d)

693. General.

Clause 1 (c) of article 19 guarantees to a citizen the right to move freely throughout territory of India. This right belongs to a free person and where a person is deprived of his liberty by imprisonment he cannot seek the aid of this right. *Gopalan v. State*, 1950 S. C. R. 88, A. f. R. 1950 S. C. 27.

This clause is complementary to article 5 which establishes a single citizenship through out the territory of India. The object being to remove all the internal barriers. A member of public is entitled to ply motor vehicles on the public roads as an incident of this right: *Shagir Ahmed v. State of U. P.*, A. f. R 1954 S. C. 728.

694. Throughout the territory of India.

The expression throughout the territory of India, indicates freedom of movement not only from one State to another but also freedom of movement within the same State. The Constitution is not giving the citizens any absolute right to enter the territory of India or go outside or right of free movement outside its territory. The right granted under this clause is not a mere concession of the idea of freedom of locomotion but it refers to the freedom of a person to go anywhere in India unrestrained and unhindered.

The words throughout the territory of India, indicate free movement from one State to another within the Union, subject to the limits provided in clause 5 of article 19. What the Constitution emphasises by guaranteeing this right is that the whole of Indian Union in spite of its being divided into a number of States, is really one Union so far as citizens of Union are

concerned. All the citizens would have the same privileges and same facilities for moving into any part of the territory and they can reside or carry on business anywhere they like. This further implies that no restrictions, either inter-State or otherwise, would be allowed to be set up in these respects between one part of India and another. The other purpose of this clause can be to protect free movement from one State to another from any legislation which the Parliament might make under entry 3f in list 1 to curtail this right : *Gopalan v. State of Madras*, 1950 S. C. R. 88 : A. I. R. 1950 S. C. 27.

Article 19 (1) (d) of the Constitution guarantees to its citizens a right to go wherever they like in Indian territory without any kind of restriction whatsoever. They can move not merely from one State to another but from one place to another within the same State. The Constitution has emphasised that the entire Indian territory is one unit so far as the citizens are concerned. However the externment order passed under Punjab Public Safety Act of 1949 was held to be *intravires* as it was held by majority judgment that though the order imposed restrictions but the restriction being reasonable cannot be questioned : *N. B. Kher v. State of Delhi*, 1950 S. C. R. 512.

695. Right to move freely.

If preventive measures are taken in the interest of public and with a view to safeguard individual rights, there is nothing illegal in it. Thus Section 57 of Bombay Police Act, 1931, (Bombay Act XXII of 1933) was held to be valid because the object was to prevent a person with Criminal propensities to move freely and the restrictions imposed were held to be reasonable. It is not necessary in such cases to have the opinion of an Advisory Board. A person can be externed and the provisions of Sections 57, and 59 cannot be held to be invalid on the ground that the allegations against the person concerned are not required to be disclosed to him. The material on which the order is passed cannot be examined by the Court : *Hari Khemu Gawali v. The Deputy Commissioner of Police*, 1956 S. C. R. 536.

696. Subjective satisfaction.

When the law provides for taking executive action on the basis of subjective satisfaction of the officer concerned, the Court cannot examine the matter in an objective way. Thus an externment order passed under Bombay Police Act of 1951 was held to be based on the subjective satisfaction of the authorities and the sufficiency of the evidence on which the order was passed could not be examined by the Court : *Hari Khemu Gawali v. The Deputy Commissioner of Police*, 1956 S. C. R. 506.

697. Person can be evicted from market area if he does not possess a licence.

Section 30 of the Gujarat Agricultural Produce Markets Act of 1954 authorises the eviction from the market of any person found to be operating in the market without holding any valid licence. This power is to be exercised by the Market Committee and is limited only to the eviction from the premises of the market. This provision is enacted for the purpose of imposing an additional penalty against infraction of the prohibition contained in Section 6 (2). This provision does not make any inroad upon the fundamental rights guaranteed to the citizens to move freely throughout the territory of India. There is no basis for the apprehension that a person infrin-

geing the regulatory provisions of the Act may be compelled to leave his home at the instance of Chairman or any office bearer of the committee : *Jan Mohd v. State of Gujarat*, A. I. R. 1966 S. C. 385.

698. Police Regulations-Domiciliary visits.

The provisions of Regulation 236, clause (d) of U. P. Police Regulations were held to be invalid in as much as these authorised "Domiciliary visits" and thus violated article 21 of the Constitution : *Kharak Singh v. State of U. P.*, (1964) 1 S. C. R. 332 : A. I. R. 1963 S. C. 1295. In this case the meaning of the words 'personal liberty' was explained and article 19 (1) (d) and article 21 were compared.

699. Watch on movements.

There is nothing illegal if the movements of a suspect are watched by the police. The freedom guaranteed by article 19 (1) (d) is confined only to tangible and feasible movements. This was the majority view expressed in *Kharak Singh v. State of U. P.*, (1964) 1 S. C. R. 332 : A. I. R. 1963 S. C. 1296.

700. Externment and internment orders.

An order of externment and internment which curtails the citizen's freedom of movement, will be void unless it is justifiable under clause 5 of article 19. What is to be seen in all these cases is the reasonableness of the restriction. And this reasonableness should be both substantive and procedural. Under the substantive reasonableness a restriction will be unreasonable if it is in excess of the requirement having regard to the object which justifies the legislation. A law providing for the externment of dangerous character from a particular locality cannot be called reasonable if it does not specifically define as to what is meant by dangerous character as it gives the administrative authority arbitrary power to determine as to whether a citizen is of dangerous character or not : *State of M. P. v. Baldeo*, A. I. R. 1961 S. C. 193 ; 1961 1 S. C. R. 979. Duration of an externment order can be one of the considerations in determining the reasonableness. Thus where an externment order was passed for a period of three months the Supreme Court held it to be reasonable : *Kher v. State of Delhi*, 1950 S. C. R. 519. A law which provides for externment for indefinite period would *prima facie* be an unreasonable restriction. A law cannot be called unreasonable simply because it enables the executive Government to remove a person altogether outside the limits of a State : *Harikhemu v. Dy. Commissioner*, 1956 S. C. R. 506. The grounds for externment order must be communicated to the person externed : *Kher v. State of Delhi* (Supra). A man served with an order of externment should be told enough so that he could make some representation.

Where an externment order was passed against a previous convict because there was likelihood of his again committing offences similar to that for which he had previously been convicted the Supreme Court has held that it was sufficient if the general nature of the material allegations against him were communicated : *Hari v. D. C. of Police*, 1956 S. C. R. 506.

Under the procedural reasonableness if there is no right given to the person externed to be heard in his defence, it cannot be sustained. Under the procedural reasonableness if the principles of natural justice are violated then the restriction may be called unreasonable. But there is no right of the externee to have his case scrutinized by an advisory board : *Harikhemu*

v. *Dy. Commissioner* 1956 S. C. R. 506. It may be possible that it may not be advisable to give a judicial type of hearing because persons may not be forthcoming to appear as witnesses against a person who is known for his dangerous character: *Gurbachan Singh v. State of Bombay*, 1954 S. C. R. 737. But at the same time, there must be some right to represent, it may be an administrative appeal only: *Kher v. State of Delhi*, 1950 S. C. R. 519: *Harikhemu v. Dy. Commissioner*, 1956 S. C. R. 506.

The provisions of East Punjab Safety Act, 1949, by which the executive could extern a person on their satisfaction which could not be challenged, for any period and directing that the authority may communicate grounds for externment, were held to be reasonable: *Doctor N. B. Khare v. The State of Delhi*, 1950 S. C. R. 519.

701. Restrictions and procedural law.

In order to judge whether restrictions on movements are reasonable or not the Court can examine the substantial as well as procedural part of the law: *Dr. N. B. Khare v. The State of Delhi*, 1950 S. C. R. 519.

702. Restrictions of entry into India.

The citizens of India have no fundamental right to enter India from outside. There are some decisions which have proceeded on basis that even the right of entering into India is contained in sub clause (b) of article 19 subject to reasonable restriction. A law which subjects a citizen to the extreme penalty of forfeiture of citizenship merely because he is convicted for the violation of permit regulation cannot be called reasonable. *Ebrahim v. State of Bombay*, 1954 S. C. R. 933: A. I. R. 1954 S. C. 229. The requirement that an Indian citizen should produce a passport before he can be allowed to enter India imposes a reasonable restriction and, therefore, such a condition as contained in Passport Act, 1920 and Passport Rules of 1950 does not offend article 19(1) (b): *Abdul Rehman v. State of Bombay*, 61 Bom. L. R. 1547: 1960 S. C. J. 50: A. I. R. 1959 S. C. 1315. A citizen of India who returns to the country without a permit or without a valid permit and who is not allowed to enter India and thus subjected to the extreme penalty of a virtual forfeiture of citizenship which cannot be called reasonable: *Ebrahim v. State of Bombay*, 1954 S. C. R. 933: A. I. R. 1954 S. C. 239.

The provisions of the Passport Act of 1920 and the Pass Port Rules, are not illegal as they are applicable to all persons including citizens and non-citizens: *Abdul Rahim Asmail v. State of Bombay*, A. I. R. 1959 S. C. 1315.

Where a law provides for taking away of rights of citizenship, article 19(1) (d) is not in any way contravened: *Izhar Ahmed v. Union of India*: A. I. R. 1962 S. C. 1052: (1963) (1) S. C. R. 136.

703. Grounds of restrictions.

The freedom of movement can be restricted on two grounds, interest of general public and secondly interest of any scheduled tribe. There is no other ground on which restrictions can be placed. The interest of public is a very wide term and will include not only public security, public order or morality but also authorises the State to impose restrictions on social and economic grounds. A restriction can be placed on the freedom of movement for example if there is likelihood of the spread of a contagious disease. Regulations can be made for removal and segregation: *Gopalan v. State of Madras*; 1950 S. C. R. 88. Further in the interest of public security or

safety of the State access and entry to protected places such as Forts, Arsenals, and other strategic areas which are potential war-zones can be restricted. It may be seen that under these restrictory powers the State is competent to remove a person of suspected character from a particular area; *Gurbarhan v. State of Bombay*, 1952 S. C. R. 737. It is within the competence of the State Governments to impose restrictions upon habitual offenders. A person whose presence endangers harmony between different classes of a community, may be removed or restriction placed on his movement; *Harikhemu v. Deputy Commissioner*, 1956 S. C. R. 506; *N. B. Khare v. State of Delhi*, A. I. R. 1951 S. C.

704. Suppression of Immoral Traffic in Women and Girls Act, 1956 does not violate Article 19 (1) (d).

Under article 19(1) (d) a prostitute has a fundamental right to move freely throughout the territory of India and under sub-clause (e) to reside and settle in any part of India. The provisions of Section 20 of the Suppression of Immoral Traffic in Women and Girls Act, 1956, which provides that a Magistrate can compel a prostitute to remove herself from the place where she is residing or which she is frequenting to places within or without the local limits of his jurisdiction by such route or routes and within such time as may be specified in the order, and prohibits her from re-entering the place without his permission is a reasonable restriction not hit by article 19 (1) (d). The reasonableness of a restriction depends upon the values of one's life in society, the circumstances obtaining at a particular point of time when the restriction is imposed, the degree and the urgency of evil sought to be controlled. If in a particular locality the vice of prostitution is degrading those who live by prostitution and demoralising others who come into contact with them, the legislature may have to impose severe restrictions on the right of the prostitute to move about and to live in a house of her choice. If the evil is rampant it may also be necessary to provide for deporting the worst of them from the area of their operation. The magnitude of the evil and the urgency of the reform may require such drastic remedy. It cannot be gainsaid that the vice of prostitution is rampant in the various parts of the country and there cannot be two opinions on the question of controlling and regulating it. Section 20 of the Suppression of Immoral Traffic in Women and Girls Act which imposes certain restrictions comes within the expression 'reasonable restriction' and is constitutional. *State of Uttar Pradesh v. Kanshalja*, 1964 S.C.D. 167 : A.I.R. 1964 S.C. 416 : 1964 1 S.C.W.R. 276

CHAPTER XIII

FREEDOM OF RESIDENCE

(See Chapter XVI on Reasonable Restriction)

SYNOPSIS

705. Scope of Article 19(1) (e)

706. Grounds of Restrictions

705. Scope of Article 19 (1) (e).

The scope of Article 19(1) (e) is similar to that of Article 19(1) (d). The object of this clause is to remove internal barriers within India or between any of its parts. The words the territory of India as used in this Article indicate freedom to reside any where and in any State of India. What the Constitution emphasises by giving this right to the citizens is that the whole of Indian Union in spite of its being divided into a number of States is really one Union so far as citizens of Union are concerned. All the citizens would have the same privileges and same facilities for moving into any part of the territory of India and they can reside or carry on business any where they like. This further implies that no restrictions, either inter-state or otherwise, would be allowed to be set up in this respect between one part of India and another: *Gopalan v. State of Madras*, 1950 S. C. R. 88: A. I. R. 1950 S. C. 27

This right like other rights which have been conferred by this Article are applicable only to the citizens and if the citizenship is taken away or terminated by a law made by Parliament under Article 11, the person affected thereby cannot make any complaint of this fact: *Abdul Rahimen v. State of Bombay* A. I. R. 1960 S. C. 1315; *Ishar Ahmad v. Union of India*, A. I. R. 1962 S. C. 1052.

Where a prostitute is removed from any locality under the orders of a magistrate made under section 20 of the Suppression of Immoral Traffic in Women and Girls Act, 1956, the restriction being placed in the interest of public, no complaint can be made regarding this. Though under 19(1) (e) a prostitute has a fundamental right to reside any where in India but if a law is made the object of which is to ban the evil of prostitution which results in placing restrictions on the rights of a prostitute, these cannot be called unreasonable: *State of Uttar Pradesh v. Kaushilya*, 1964 S. C. D. 167: A. I. R. 1964 S. C. 416. (See Para 704)

706. Grounds of Restrictions.

Restrictions can be placed on this right on the grounds of public health, Public Order, and in the Interests of Scheduled Tribes. Passport Regulations on entry from outside can be imposed even on citizens of India: *Ebrahim v. State of Bombay*, 1954 S. C. R. 933; *Abdul Rehman v. State of Bombay*, A. I. R. 1960 S. C. 416. But if the effect of a provision is virtually to deprive a citizens of his citizenship, it cannot be called reasonable. The removal of a citizen from India on the subjective

satisfaction of the executive and without giving him any opportunity to explain his case cannot be called reasonable: *Ebrahim v. State of Bombay*, A. I. R. 1954 S. C. R. 933.

When the law provides for taking executive action on the basis of subjective satisfaction of the officer concerned, the Court cannot examine the matter in an objective way. Thus an externment order passed under Bombay Police Act of 1951 was held to be based on the subjective satisfaction of the authorities and the sufficiency of the evidence on which the order was passed could not be examined by the Court: *Hari Khemu Gargali v. The Deputy Commissioner of Police*, 1956 S. C. R. 506.

CHAPTER XIV

RIGHT TO PROPERTY

(See Chapter XVI on Reasonable Restrictions)

SYNOPSIS

- 707. General
- 708. To acquire, hold and dispose of—Meaning of
- 709. Property—Meaning of
- 710. Article 19 (1)(f) and 31 (2)
- 711. Article 19 (1) (f) deals with both abstract and concrete rights
- 712. Quasi permanent allotment is not property
- 713. Foreigners are not protected by article 19
- 714. Citizen include only natural person—Position of foreign companies

SOME INSTANCES

- 715. Reduction of rent does not violate article 19(1)(f)
- 716. Electricity Supplying Undertaking can be taken over by State
- 717. Acquisition under the Land Acquisition Act is not violative of freedom of property
- 718. A licence which does not pass any property, if taken away, does not violate article 19(1)(f)
- 719. Property owned by various persons—It can be sold and sale proceeds divided if it is not capable of partition
- 720. Offerings made to Durgah can be collected by Nazim-Khadums of Durgah cannot complain of any infringement
- 721. Rights of a Mahant in the property of the Math.
- 722. Assessee cannot claim refund of Sale Tax
- 723. Section 237 of the Companies Act does not violate Article 19(1)(f)
- 724. A Grant which is not absolute does not confer any right
- 725. Fixation of maximum rent does not violate Article 19(1)(f)
- 726. Temporary deprivation is not hit
- 727. Increase of licence fee from Rs. 400/- to Rs. 6,000 held legal
- 728. Right of share holder to borrow money from the company is not a fundamental Right

729. Pre-emption based in vicinage is *ultra vires* of Article 19 (1)(f)
730. Implementation of scheme delayed by litigation—Enforcement of Constitution—Validity cannot be examined
731. Law interfering with rights of property should give reasonable opportunity
732. A law dealing with recovery of tax may provide special procedure
733. Mere interference with management does not violate article 19 (1)(f)
734. Punjab pre-emption Act held valid, when sons given right to pre-empt
735. Village common lands and Abadi Deh can be given to non-proprietors.
736. Import control orders.
737. Deprivation of property on subjective opinion is bad
738. Word "property" is to be liberally construed
739. Right to hold fair is property
740. Right to catch fish is not property
741. Law giving opportunity to be heard is not arbitrary
742. Industrial Disputes Act, 1947, section 10 is constitutional
743. Provision preventing ejection of tenants is legal
744. Right which a new sovereign may recognise (see para 347)
745. Right should be independent
746. Right to 'purchase price' is property
747. Burden of proving that the goods are not smuggled. The rule is in the interest of public
748. Contractual rights can be varied
749. Denial to establish claim in civil court if unconstitutional

707. General.

Article 19 (1) (f) deals with the right to property which includes freedom to acquire, hold and dispose of property. This Article is intended only against State action. Violation of right of property by private individuals is not within the purview of this Article : *P. D. Shamdasani v. Central Bank of India*, A. I. R. 1952 S. C. 59.

The ideology behind this right is that of individualism. This article has no application where the right of property of one individual citizen is violated by another and where the State seeks to exercise its right under the ordinary law as owner of property as distinguished from its sovereign right.

708. To acquire, hold and dispose of—Meaning of

To acquire means to become owner of the property. The word 'to hold' was interpreted in *Charanjit Lal v. Union of India*, 1950 S. C. R. 869 where it was interpreted to mean as the right to possess and enjoy all the benefits which are ordinarily attached to the ownership of property. The right

to dispose of property is incidental to the right to hold it. Where a citizen loses his right to hold property e. g. when a society is dissolved under the Societies Registration Act, a member of defunct society cannot complain if any provision is made for the administration of the property of the society : *Board of Trustees v. State of Delhi*, A. I. R. 1962 S. C. 458.

709. Property—Meaning of

A property is that which is so recognised by law : *Dwarka Dass v. Sholapur Spinning Co.*, 1954 S. C. R. 674. Any thing which a man produces by his labour and which is so recognised by law is property. State may provide that an individual cannot have right to property in certain things e. g. public office, gambling devices or smuggled goods. Similary citizens may not be allowed to own liquor and narcotics *

Similary a contractual or statutory right to purchase or a personal agreement which does not by itself create an interest cannot be called property : *S. M. Transporter v. Sankararamamigal*, A. I. R. 1963 S. C. 864, *Mahadev v. State of Bombay*, A. I. R. 1959 S. C. 735 : 1959-Supp-2 S. C. R. 339. A grant which is not absolute may not confer any proprietary rights : *Vira Vala v. State of Saurashtra*, 1960-3 S. C. R. 521 : A. I. R. 1967 S. C. 346. Similar will be the case where the grant is made by a person who is not in a position to make it. The fundamental right contained in Article 19 (1) (f) is of no consequence unless the person claiming under it can establish his legal right : *Rameshwar v. Commr.*, A. I. R. 1959 S. C. 498. The right to recover a statutory purchase price in lieu of deprivation of land is a right to property : *Jayvat Singh ji v. Commr.*, A. I. R. 1962 S. C. 821 : 1962 (Supp) 2 S. C. R. 411.

Right to vote which a person enjoys in his capacity as a shareholder is not property : *Chiranjit Lal v. Union* 1950 S. C. R. 869. But an office may be blended with the rights of property as is the case of a *Mathadhipati* or the *Shebait* : *Commr H. R. E. v. Lakshmindra* 1954 S. C. R. 1005 ; *Angurbala v. Debabrata*, 1953 S. C. R. 503. However *Tikait* of Nathdwara Temple is not property : *Gorindlalji v. State of Rajasthan*, A. I. R. 1963 S. C. 1633. Bare deprivation of roanagement which may be temporary or other wise cannot be called property : *Dwarka Nath v. State of Bihar*, A. I. R. 1959 S. C. 349 ; *Karla Education Society v. State of Uttar Pradesh*, A. I. R. 1966 S. C. 1360.

The interest of an allottee which arises from a statutory grant cannot be called property : *Amar Singh v. Custodian*, A. I. R. 1957 S. C. 599. An incorporeal right e. g. the rights of bare licence or to hold land revenue free is not property : *Sidhraybhai v. State of Gujarat*, A. I. R. 1963 S. C. 540.

The word property as used in this Article should be given a liberal meaning and should be extended to all those rights which bear the insignia of proprietary rights : *Commr. H. R. E. v. Lakshmindra*, 1954 S. C. R. 1005. When used in general terms it would include all rights in property over which a person has a dominion and every possible interest in it capable of being disposed of : *State of W. B. v. Subodh Gopal*, 1954 S. C. R. 587 ; *Chiranjilal v. Union of India*, 1950 S. C. R. 869. In this sense it would include any proprietary interest even though temporary such as that as of a lessee or mortgagee. Even right to file a suit in respect of a claim of property would also be property : *Suryapal v. State of U. P.*, 1952 S. C. R. 1056. A

* See *Samuels v. McCurdy*, (1925) 267 U. S. 183 : *U. S. v. Jeffers*, 1951) 342 U. S. 48.

right to hold a fair on one's property would also fall within the term property : *Ganapati v. State of Ajmer*, 1955 (1) [S. C. R. 1065. A managing agency would also be covered by the definition of the term property : *J. K. Trust v. Commr, of Income-tax* 1958 S. C. R. 65. The amount of unpaid wages and hereditary trusteeship would also fall within the term property : *Jayvantsingji v. State of Gujarat*, A. I. R. 1962 S. C. 821 : 1962 Supp (2) S.C.R. 411 ; *Bombay Dyeing v. State of Bombay*, A. I. R. 1958 S. C. 323 : *Amar Singh v. Custodian*, A. I. R. 1957 S. C. 599.

710. Article 19 (1) (f) and 31 (2).

Article 19 (1) uses the term property in its widest sense whereas the term is circumscribed in Article 31 (2) by the doctrine of "Eminent domain". Where a person is deprived of all rights of property Article 19 (1) (f) has no application as this article postulates the existence of property which can be enjoyed : *State of Bombay v. Bhanji Munji*, 1955 S. C. R. (1) 777, A. I. R. 1954 S. C. 41. Money is property within the meaning of Article 19 (1) (f) and it cannot be subject to compulsory acquisition under article 31 (2). The scope of Article 19 (1) (f) is different from that of Article 31 the former declares the fundamental right of a citizen to own property which has nothing to do with the right to or of property owned by a citizen which is governed by Article 31 : *State of West Bengal v. S. G. Bose*, A. I. R. 1954 S. C. 92.

Article 31 and article 19 do not overlap. These two articles deal with different subject matters and operate in different fields. Article 19 (1) (f) postulates the existence of property which can be enjoyed and over which rights can be exercised : *State of Bombay v. Bhanjimunji*, A. I. R. 1955 S. C. 41.

The scope of article 19(1) (f) is different from the scope of article 31. The former declares the fundamental right of a citizen to own property. This has got nothing to do with right to or of property owned by a citizen, which is governed by the provisions of article 31. The rights to or of private property are dealt with under article 31 and are protected by this article: *State of West Bengal v. S. G. Bose*, A. I. R. 1954 S. C. 92. There may be cases in which the deprivation of fundamental rights to own property may constitute reasonable restrictions under article 19(5) : *Kavalappara Kottarathil Kochuni v. State of Madras*, (1960) 3 S. C. R. 887. Imposition of illegal tax under a law infringing article 19(1) (f) cannot be allowed: *Gopalnaraian v. State of U. P.*, A. I. R. 1964 S. C. 370.

711. Article 19 (1) (f) deals with both abstract and concrete rights.

The language used in article 19 (1) (f) is wide enough to include both abstract and concrete rights of property. To suggest that abstract right of citizen in property cannot be infringed by the State but his concrete right can be, is to deprive Article 19 (1) (f) of its real scope. If such a construction is placed on this article it will mean that State can make any law declaring generally that a citizen cannot acquire hold and dispose property but it could make a law taking away the property acquired and held by him and preventing him from disposing it. It would mean that the Constitution maker declared platitudes in the Constitution while they gave unrestricted liberties to the Legislature to interfere with impunity with property rights of citizen. If this meaning was to be given to article (19) (1) (f) the same meaning would have to be attributed to other clauses in article 19. With the result that the legislature cannot make a law preventing generally citizen from expressing their views, assembling peacefully,

forming associations and so on but can make a law restricting their rights when they are speaking, when they are assembling and when they are forming associations. Such intention cannot be attributed to the Constituent Assembly. The words used in article 19 of the Constitution of India are comprehensive to include both concrete as well as abstract rights of property: *S. M. Transporters v. S. Mutt*, A.I.R. 1963 S.C. 864.

712. Quasi permanent allotment is not Property.

Property to fall within the scope of article 19 (1) (f) must be capable of being the subject matter of acquisition and disposal. The rights which are conferred by the East Punjab Evacuees (Administration of Property) Act of 1947 does not constitute property. The interest of a quasi permanent allottee arises by a statutory grant to a specified class of persons and is not capable of acquisition by the ordinary citizens in any of the normal modes. Nor is it capable of disposal by the allottee himself in the normal modes by way of sale mortgage, gift or will. Such an interest cannot be brought within the purview of article 19 (1) (f). The sum total of the various incidents of a quasi permanent allotment does not in any sense constitute even qualified ownership of the land allotted. At best it is analogous to what is called *Jus in re aliena* according to the concept of Roman law and may be some kind of interest in the land. The basic feature of that interest is that the ultimate ownership of the land is still recognised to be that of the evacuee and allotment itself is liable to resumption or cancellation with reference to the exigencies of the administration of evacuee law. The interest so recognised is in its essential concept, is provisional, though with a view to stabilisation and ultimate permanence. A quasi permanent allottee cannot be said to be the owner of property as contemplated by article 19 (1) (f) and such an allotment does not fall within the concept of fundamental rights guaranteed by Article 19 (1) (f): *Amar Singh v. Custodian, East Punjab*, 1957 S.C. J. 574 : 1958 S.C. A. 171; A.I.R. 1957 S.C. 599.

713. Foreigners are not protected by article 19.

Article 19 has got no application to foreigners or foreign companies. This was a case of contravention of S. 52(a) of the Customs Act in which penalty was imposed under Section 167 (12) (A) and 83. It was held that the Shipping Corporation of India Ltd., being a foreign company could not seek the protection of article 19: (1) (f). *British I. S. N. Company v. Jasjit Singh*, A.I.R. 1964 S.C. 1451 : (1964) 2 S.C. J. 543.

714. Citizen include only natural person-Position of foreign Companies.

A company being an artificial person cannot claim the protection of Article 19. The company is not a citizen and therefore has no fundamental right: *Barium Chemical v. Company Law Board*, A.I.R. 1967 S.C. 295. The State Trading Corporation which is company registered under the Indian Corporation Act 1956 is not a citizen within the meaning of Article 19 of Constitution and cannot ask for the enforcement of Fundamental rights: *State Trading Corporation v. Commercial Tax Officer*, A.I.R. 1963 S.C. 1811. In the case of *Sewpujra v. Collector of Customs*, A.I.R. 1958 S.C. 845, their Lordship of the Supreme Court observed that even if it be presumed that company can be citizen as defined in the Constitution, a foreign company possesses no right of citizenship of this Country and hence no right under Article 19. However the matter is now quite clear as is evident from the two latter decision of the Supreme Court cited above.

. Part II of the Constitution when it deals with citizenship refers to

natural persons only. This is further made absolutely clear by the Citizenship Act which deals with citizenship after the Constitution came into force and confines it only to natural persons. There can be no Citizen of this country who is neither to be found within the four corners of part II of the Constitution or within the four corners of the Citizenship Act, 1955. The above two provisions are exhaustive on the question of citizenship of this country. Part II dealing with citizens on the date when the Constitution came into force and the Citizenship Act dealing with citizens thereafter. These two provisions are completely exhaustive. The fact that corporations may be nationals of the country for purposes of international law will not make them citizens of this country for purposes of municipal law or the Constitution. The word "citizen" used in Article 19 of the Constitution was not used in a different sense from that in which it was used in Part II of the Constitution: *State Trading Corporation of India v. Commercial Tax Officer*. (Supra)

The definition of the word "person" in S. 2 (i) (f) of the Citizenship Act says that the word "person" in the Act "does not include any Company or association or body of individuals, whether incorporated or not". Hence, all the subsequent provisions of the Act relating to citizenship by birth (S. 3) citizenship by descent (S. 4) citizenship by registration (S. 5) citizenship by naturalisation (S. 6) and citizenship by incorporation of territory (S. 7) have nothing to do with a juristic person: *S. T. Corporation of India v. Commercial Tax Officer*, A. I. R. 1963 S. C. 1811.

715. Reduction of rent does not violate article 19 (1) (f).

The reduction of prevailing rents by an act of legislature, if it is covered by the definition of reasonable restriction, cannot be called violative of article 19 (1) (f). In such a case the government has to see whether the Act, when it provides for reduction of rent, is based on a reasonable basis, i. e. the rents prevailing in the neighbouring areas is same or not and a comparison of rents is made. If after reduction nothing is left with the land-lord, it can be said that the restriction imposed is unreasonable, but this is only a theoretical possibility. The mere fact that in some cases the ratio of net income after reduction of rent as compared to the net income before reduction falls below 25 per centum, it cannot be said that there is any infringement of article 19 (1) (f). The vires of Madras State Lands (Reduction of Rent) Act, 1947 was also challenged on the ground that the provisional government is not competent to frame the law under the relevant entry of the Government of India Act, 1935. It was held that the State Government is competent to frame such a law under Item 21 of list II of Scheduled VII to Government of India Act, 1935 dealing with the land: *State of Madras v. Kannehalli*, A. I. R. 1962 S. C. 1687.

716. Electricity Supplying Undertaking can be taken over by State.

Section 28 (1) of the Electricity Act, 1910 as it stood prior to its amendment in 1959, authorised the State government to give sanction to a person to engage in the business of supplying energy on conditions as laid down in that behalf. The grant of such a sanction is not a permanent thing. In fact, it is bound to be temporary and issued on adhoc basis according to the requirement of each case. A condition for the acquisition of the property of the grantee under section 28 (1) of the Electricity Act cannot be called violative of right to property as conferred by article 19 (1) (f). In this case the undertaking of the petitioner was taken over by the P. W. D. Electricity Branch of the State of Punjab. It was held that there is nothing illegal in it

as the provisions of section 28 only imposes reasonable restriction in the interest of general public within the meaning of article 19 (5) of the Constitution : *Okara Electricity Supply Co. v. State of Punjab*, 1960 2 S. C. R. 239, A. f. R. 1960 S. C. 284. A law which deprives a person of his property may be invalid under article 19 (1) (f) unless it is saved by clause (5) of article 19. The law which deprives a person of his property should be a valid law : *Kochini v. State of Madras and Kerala*, A. I. R. 1960 S. C. 1080, 1960-2 S. C. A. 412.

717. Acquisition under the Land Acquisition Act is not violative of freedom of property.

By a notification issued under section 4 of the Land Acquisition Act, 1894, the State of Maharashtra stated that the Land specified in the schedule attached to the said notification are likely to be needed for the purposes of a factory building for certain iron and steel works. A special Land Acquisition Officer was appointed to perform the functions of a Collector. The acquisition was challenged on the ground that the land was not being acquired for any public purpose and the proceedings were malicious and vexatious as it was said that the company for whom the land was being acquired was negotiating privately for the purchase of notified area.

It was held that when a land is acquired under the Land Acquisition Act, it cannot be challenged under article 19(1)(f). This view has been expressed in many decisions of the Court reported as *State of Bombay v. Bhanjimanji*, 1955-1 S.C.R. 777 ; *Lilawati Bai v. State of Bombay* : 1957 S.C.R. 721 ; *Barkya Thakur v. State of Bombay*, A.I.R. 1960 S.C. 1203.

718. A licensee which does not pass any property if taken away does not violate Article 19(1) (f)

A notification was issued by the State Government in the year 1952 by which the jagirs were resumed by the State Government. An application was made to the Commissioner for Jagirs for cutting certain forest. During the pendency of this application the Jagirdar authorised certain persons to cut trees in certain areas of his Jagir. The sanction of the Commissioner for jagirs was obtained in the year 1954 and the exploitation of areas was started. The contracts for cutting the forests expired on 30th of June, 1954 and an application for extension was made which application was granted and the extension was made till 30th of July, 1955. On 25th of March, 1955 the contractors were asked to stop the work including cutting of trees and the contractors were further informed that the timber wood, charcoal and all other material stood confiscated by the government. This order was challenged as violating article 19(1)(f). It was held that the order restricting the contractors to cut the trees was not in any way violative of article. 19 (1)(f) as the contractors were only licensees and a licence could not be said to pass any property to the contractors : *Rameshwar Prasad v. Commissioner Land Reforms*, A.f.R. 1959 S.C. 498 : 1959 S. C. J. 621 : 1959 2 S. C. A. 236.

719. Property owned by various person—It can be sold and sale proceeds divided if it is not capable of Partition.

Section 10(a) (iii) of the 'Evacuee Interest' (Separation) Act, 1951 provided that the property, if it is not possible to partition it, could be sold and the sale price distributed among the various persons claiming it. The composite property in the case consisted of a sugar mill which in the very nature of things could not be partitioned. The money value of a share of the non-evacuees represented a large sum of money. As the

property could not be partitioned, action was taken under Section 10(a) (iii) of the Evacuee Interest (Separation) Act, 1951 and the sale proceeds were divided, it was held that this provision does not violate article 19(1) (f) or article 31 of the Constitution of India: *Alimunnissa v. Deputy Custodian, Evacuee Properties*, 1961 2 S. C. R. 91, A. I. R. 1961 S. C. 365.

720. Offerings made to Dargah can be collected by Nazim-Khadims of Dargah cannot complain of any infringement.

The provisions of Dargah Khawaja Sahib Act, 1955 came for consideration before the Court in the case of *Dargah Committee v. Hussain Ali*, 1961 2 S. C. A. 171, A. I. R. 1961 S. C. 1402. The relevant Section which was attacked as violating article 19(1) (f) was Section 2 (d) (v) and Section 14 which provided that offerings which are made earmarked generally for the Dargah, they belong to the Dargah and such offerings can be received only by the Nazim or his agent and no body else. These offerings never belonged to the Khadims. The Khadim's right to receive offerings is an entirely different thing from the offerings which are made to the Dargah. The right of the Khadim to receive offerings, which is a judicially recognised right, is not affected in any way by the provisions mentioned above. Even after the coming into force of the Act the pilgrims could make offerings to the Khadim and there was no provision which interfered with the offerings so made. It was held in this case that such a provision does not in any way violates article 19(1) (f).

721. Rights of a Mahant in the property of a Math.

The right of a Mahant over the property of the Math is undoubtedly property. A Mahant is not a mere manager or custodian nor is he a trustee in the strict sense. The holding of the office of Mahant by customs and usage of the institution confers a large number of right which are proprietary in nature over the property of the math on the Mahant but at the same time by virtue of his office there are obligations imposed upon him. The Mahant of the Math is generally a Sanyasin who has renounced the worldly affairs and who has no family ties either by blood or by marriage and in a theoretical sense he has taken a vow of not owning any property. He in his capacity as a Mahant has to incur expenditure for the Math i. e. for carrying on the religious worship, but he cannot use the money for his personal luxury or in objects incongruous with his position as a Mahant. Power to waste the property or the income of the institution is not the right of the Mahant.

Reasonable restrictions can be placed upon the right of the Mahant to deal with the property of the religious institution in the interest of general public. Where there is a provision for the removal of the Mahant or for taking control of the institution where the property of the Math is being utilised for personal enjoyment or luxury, it cannot be said that there is any violation of article 19 (1) (f). *S. T. Swamiar v. Commissioner H. R. & C. E.*, 1963-2-S. C. A. 340: A. I. R. 1963 S. C. 973.

But where restrictions were placed on the right of a Mahant to enjoy property in such a way that he was reduced to the level of a State servant, it was held that the restrictions are unreasonable. *Commissioner H. R. E. v. Sri L. T. Swamiar*, A. I. R. 1954 S. C. 257 : (1954) S.C.R. 1005 ; 1954 S. C. A. 415, 1954 S.C.J. 335.

A Math is a religious institution presided over or managed by hereditary trustee. The provisions of Orissa Hindu Religious Endowment Act, 1952 as

amended in 1954 was held to be constitutional as giving enough opportunity for redressing any wrong done: *Sadasib Parkash v. State of Orissa*, A. I. R. 1956 S. C. 432; 1956 S. C. R. 43.

The provisions of Bihar Hindu Religious Trust Act as contained in Section 60(6) of the Act which conferred power to alter or modify the budget relating to a religious trust or to give directions to a trustee cannot be said to affect the due observance of religious practices in a Math or Temple so as to constitute an encroachment of the fundamental rights contained in article 25 or article 19(1) (f). If the object of the Act is to provide for better administration, protection and preservation of trust properties, it cannot be termed as unreasonable: *Moti Das v. S. P. Sahi*, A. I. R. 1959 S. C. 942, 1959 S. C. J. 114.

A provision contained in the Hindu Religious endowment under the Hyderabad endowment Regulation 1940 for the registration of endowed property and for carrying out the object of the endowment i. e. to carry out the intention of the endower cannot be called violative of article 19 (1) (f). These regulations are clearly reasonable and are made in the interest of general public within the meaning of article 19 (1) (f). A provision in the Act which imposes a penalty for neglecting to carry out the provision of the Act and which provides that the trustee can be deprived of the benefits under the endowment cannot be called violative of article 19 (1) (f). The purpose of these regulations is that endowments existing in the State and their management should be carried on for the benefits of the humanity according to the terms of the endowment: *Anant Parsad v. State of Andhra Pradesh*, A. I. R. 1963 S. C. 358.

722. Assessee cannot claim refund of sale tax.

The provisions of Orissa Sales Tax Act 28 of 1958 contained a provision which deprived the assessee of the right conferred on him by common law to claim refund of the amounts paid as tax under an error or law. This provision provided that the claim could be made only by the person from whom the dealer has actually realised the amount by way of sale tax. This provision was held to be infravires of article 19(1) (f). Even if it be presumed that the provision mentioned above which provides that the tax can be collected only by the purchaser is restrictive of the right conferred by Article 19(1) (f) it will be saved because such a provision is in the interest of general public. It was held that the right of the assessee to obtain the refund was lawfully curtailed: *Orient Paper Mills v. State of Orissa*, 1961-2 S. C. J. 610, A. I. R. 1961 S. C. 1438.

723. Section 237 of the Companies Act, does not violate Article 19 (1) (f).

Section 237 of the Companies Act, 1966 which enable the Central Government to make an order appointing an Inspector to investigate the affairs of a company in different sets of circumstances is not violative of article 19 (1)(f). In this case it was further observed while relying on an earlier decision in *State Trading Corporation v. Commercial Tax Officer*, 1964-4 S.C.R. 99 : A.I.R. 1963 S.C. 1811 that a company is not a citizen of India and even assuming that section 237 imposes a restriction on the right to carry on occupation these cannot be challenged. It was further observed that the restriction, if any imposed is in the interest of public. *Barium Chemicals Ltd. v. Company Law Board* 1966-1 S.C.A. 747; A.I.R. 1966 SC. 295.

724. A Grant which is not absolute does not confer any right.

A grant which is not absolute cannot confer any fundamental right on

any person and if any action is taken by the State, the same cannot be declared as violative of right to property. In this case the ruler of a State in Kathiawar executed two documents in favour of his younger son, one granting in perpetuity and in hereditary a village in the State as "*Kapal-Giras*" as "*Bhayat*" and another as "*Hak Patrak*". On the death of the ruler the son in whose favour the document was executed along with his elder brother succeeded his father's property. A notification was issued by the Government of the State of Saurashtra whereby it was said that the grant has lapsed. On the construction of the document, the Supreme Court came to the conclusion that the grant was not absolute and consequently the order declaring that the grant had lapsed and reverted to State cannot be called violative of 19 (1) (f): *Vira Vala v State of Saurashtra* 1960-3 S.C.R. 521; AIR 1967 S.C. 346.

725 Fixation of maximum rent does not violate Article 19 (1) (f).

The provisions of Mysore Tenancy Act 1962 were held to be constitutional and not violative of article 19(1)(f). The fact that section 6(1) of the Act made no distinction between the irrigated and non-irrigated lands was held to be of no importance. The fixation of maximum ceiling of rent without making any distinction as to irrigated and non-irrigated lands does not violate any fundamental right. In dealing with a law which has been passed for the purpose of affecting an agrarian reform, it would be pedantic to ignore the essential basis of its material provisions merely on the ground that the concept of social justice on which the said provision is based has not been expressly stated to be one of the objects of the Act in the preamble. Where the object of the Act is to improve the economic and social conditions of agricultural tenants and which is clear from the provisions of the statute the non mention of it in the preamble is not material: *R. S. Swamiji v. State of Mysore*, (1963) 2 S.C.R. 226; A.I.R. 1966 S.C. 113.

726. Temporary deprivation is not hit.

The provisions of U.P. Intermediate Education Act of 1939 which enable the Director of Education to inspect the recognised institutions and to direct removal of defects and to refer the case to the State Government if the directions of the Director are not complied with and if consequently State Government proceed against the institution and take over control of the institution, it cannot be called violative of article 19(1)(f). The State in a democratic set-up is vitally interested in securing a healthy system of imparting education for its coming generation of citizens and if the management declines to afford facilities for enforcement of the provisions enacted in the interest of the students a provision authorising State Government to enter upon the management through its authorised controller cannot be called violative of fundamental rights regarding property. Moreover temporary deprivation is not prohibited by the Constitution: *Katra Education Society v. State of Uttar Pradesh*, AIR 1966 S.C. 1360. (See para 733).

727. Increase of licence fee from Rs. 400 to Rs. 6,000 held legal.

Where a licence fee on a cinema house was fixed at Rs. 400/- per year in 1948 and when it was increased to Rs. 6,000/- in the year 1958, by changing the basis of assessment and fixing it at Rs. 5/- per show, it was held that the increase in the rate of fee may be large but it cannot be challenged on the ground that it is expropriatory when according to the seating capacity of the house it would collect Rs. 1000/- per show. Under the circumstances it was held that there is no violation of article 19(1)(f): *Corporation of Calcutta v. Liberty Cinema*, (1965) 1 S. C. A. 657; AIR 1965 S. C. 1108.

728 Right of share holder to borrow money from the company is not a fundamental Right.

Article 19 (1) (f) recognises the right of a citizen to acquire, hold and dispose of property. The provisions of section 16 (2)(e) and section 12 (1B) Income Tax Act as introduced by Finance Act 15 of 1955 do not contravene this right. The effect of this provision was to make a loan borrowed by share-holders from the company a receipt of the dividend. This provision does not affect the right of the share holder to borrow money from the company. Moreover, the share holder's right to borrow money from his own company is not a fundamental right. If any restriction is placed on this right, it cannot be said to be violative of article 19(1)(f). Before the Finance Act of 1955, the share-holders could enjoy the use of the money and the company in return would get interest and the result was that the payment of tax was evaded. This loophole was plugged by this amendment and it cannot be said to be violative of any fundamental right. *Narveel Lal v. Appellate Assistant Commissioner of Income Tax*, (1965)-2 S. C. J. 160, A.I.R. 1965 S.C. 1375.

729 Pre-emption based on vicinage is ultravires of Article 19 (1)(f)

A custom which is in violation of article 19(1)(f) cannot be sustained. In *Babu Ram v. Baij Nath Singh*, 1962 Supp 3 S.C.R 724 the Supreme Court came to the conclusion that pre-emption law based on vicinage is void. The reasons given by the Court to hold a statute law void will apply with equal force to a custom. The definition of the phrase 'laws in force' as occurring in article 13(3)(b) is an inclusive definition as it is intended to include laws passed or made by a legislature or other competent authority before the commencement of the Constitution irrespective of the fact that the law or any part thereof was not in operation in any particular area. Custom and usage having in the territory of India the force of law must be held to be contemplated by the expression all laws in force. The customary Law of pre-emption on the ground of vicinage imposes unreasonable restriction on the right to acquire hold and dispose of property guaranteed by article 19(1) (f) of the Constitution and is, therefore void. *Sant Ram v. Lakh Singh* (1964) 7-S. C. R 756 A. L. R. 1965 S. C. 315

730 Implementation of scheme delayed by litigation Enforcement of Constitution-Validity cannot be examined

Where under the Madras Hindu Religious Endowments Act of 1917 a scheme was framed for a Math and an Executive Officer was appointed and property rights of the Mathipatis were taken away the Court refused to examine the validity of the Scheme in the light of fundamental rights guaranteed by article 19 (1) (f). Merely because implementation of the Scheme has been delayed till after the Constitution due to litigations and obstructions by Mathipatis would not confer any jurisdiction on the court to examine the question of constitutionality. In this case the predecessor of the Appellant (Mathipatis) filed a suit in 1939 in the Court of District Judge Anantapur for getting the said scheme set aside. The suit, however, failed. The case went in appeal in 1945, before the Madras High Court. Meanwhile, the Constitution came into force on 26th of January, 1950 and it was alleged before the Madras High Court in a writ petition that the scheme violated article 19 (1) (f). The Supreme Court came to the conclusion that the delay in the implementation of the scheme will not confer any right as the fundamental rights are not retrospective. The

earlier decision in *Shanti Swarup v. Union of India*, A.I.R. 1955 S.C. 624 was distinguished : *Rajan Das Swami v. Commissioner H. R. C. E.*, 1964-8 S.C.R. 252 : A.I.R. 1965 S. C. 502.

731. Law interfering with rights of property should give reasonable opportunity.

Section 4 (1) read with sub-section 4 of the Bhopal Reclamation & Development of Lands (Eradication of Kans) Act, 1954 was held to be unconstitutional as it imposed unreasonable restrictions on the right to hold and enjoy property within the meaning of article 19 (1) (f). This Act contained no machinery for entertaining objections or for giving an opportunity to the owners or occupiers of the land selected for conducting eradication operation to establish that notwithstanding his land being included in the notification under section 4 (1), the particular land in which he was interested was not Kans infested and therefore did not stand in need of any eradication operation. This provision was characterised as arbitrary and as imposing an unreasonable restriction on the right to hold and enjoy property within the meaning of article 19 (1) (f): *State of Madhya Pradesh v. Champa Lal*, A.I.R. 1965 S.C. 124 : (1964) 6 S.C.R. 35.

732. A law dealing with recovery of debts may provide special procedure.

The Patiala Recovery of State Dues Act and the rules made thereunder cannot be attacked as contravening article 19 (1)(f) of the Constitution. The provision of the Act authorises the Managing Director of the Bank to decide the question of the existence and the extent of the liability of the customers of the Bank after making an enquiry in the manner prescribed subject to an appeal to the Board of Directors of Bank and a revision to the *Ijlavi-i-khas*. The amount found due would be realised through the Nazim as if they were arrears of land revenue and through the Accountant General by authorising him to withhold amounts due to the defaulter from any department of the State. The Civil Court has no jurisdiction regarding any action so taken. These provisions were held to be intra-vires of article 19 (1)(f) : *Lachhman Dass v. State of Punjab*, 1963 2-S. C. R. 353; A. I. R. 1963 S. C. 222.

733. Mere Interference with management does not violate article 19 (1) (f).

Mere interference with the right of management of an educational institution does not amount to an infringement of the right to property under article 19 (1)(f). The word property as used in article 19 (1) (f) is to be extended to all those recognised types of interest which have the insignia or characteristics of proprietary rights. A society which is maintaining an educational institution cannot be said to have any interest or right violated when the State Government by an Executive Order interferes with the management of the Institution: *Sidhrajibhai v. State of Gujarat*, 1963-2 S.C.A. 394; A. I. R. 1963 S. C. 540.

734. Punjab Pre-emption Act held valid when sons given right to pre-empt.

Section 15 of the Punjab Pre-emption Act confers a right on the members of family of the vendor to file a suit for pre-emption. No doubt this act imposes a restriction on the right to hold and dispose of property on the part of the vendor but the Supreme Court held that the restrictions so imposed is reasonable. The purpose of the Act is to preserve the

integrity of the village and the village community and to implement the agnatic rule of succession. The second ground i. e. the person next in succession should have the chance of obtaining the property alone was held to be sufficient to render the restriction reasonable: *Ram Sarup v. Munshi*, 1963-S. C. D. 728: 65 Pun. L. R. 531; A. I. R. 1963 S. C. 553.

735. Village common land and Abadi Deh can be given to non-proprietors.

The transfer of Shamlat Deh owned by the proprietors through the village Panchayat for the purpose of management in the manner prescribed under an Act and the conferring of proprietary rights on non-proprietors in respect of lands in Abadi Deh is legal and the several provisions of the law allowing this to be done are intra vires even if no compensation, is payable. The Supreme Court came to the conclusion that this being done under an Act, the purpose of which is to bring agrarian reform, it cannot be said that the transfer of Shamlat Deh is unconstitutional: *Ranjit Singh v. State of Punjab*, (1965)-2 S.C.A. 385: A.I.R. 1965-S.C. 632.

736. Import Export order.

The prohibition imposed on trade by way of export or import control orders cannot be called unreasonable. All that is required is that the restriction imposed should be protected by the protection afforded by reasonable restrictions as contained in Article 19. Where the object of imposing such regulations is to save foreign exchange or to stop smuggling, there is nothing unreasonable in it which may be called violative of Article 19 (1) (f): *Collector customs v. Sampathu*, A.I.R. 1962 S. C. 316.

737. Deprivation of property on subjective opinion is bad

When a law deprives a person of possession of a property for an indefinite period of time merely on the subjective determination of an Executive Officer it cannot be called reasonable. Where the Court of Wards can at its discretion and on its subjective determination assume the superintendence of the property of the landlord who habitually infringes the rights of his tenants and when this discretion cannot be questioned in any court of law, it will be hit by article 19 (1) (f): *Raghubir Singh v. Court of Wards*, A. I. R. 1953 S. C. 373.

738. Word "property" is to be liberally construed

The Word 'property' as used in article 19 (1) (f) of the Constitution of India should be given a liberal and wide connotation and so interpreted, it will include all those rights or interests which have the insignia or characteristics of propriety rights. The Mahant has a right to enjoy his property. To take away this right and merely leave him to discharge his duties will be to destroy his character as a Mahant. The beneficial interest which a Mahant enjoys is appurtenant to his duties and as he is in charge of a public institution reasonable restriction can always be placed upon him. A Mahant's duty is not simply to manage the temporal affairs of a Math. He is head and superior of spiritual fraternity and he is to impart spiritual training to his disciple. If any restriction is imposed which curtails this right, it may become unreasonable. The reasonableness of a statute dealing with this aspect has to be judged by taking these factors into consideration: *Commissioner Hindu Religious Endowments v. L. T. Swamier*, A. I. R. 1954 S. C. 282.

739. Right to hold fair is property.

A right to hold fair on one's own land is a fundamental right under article 19 (1) (f) and it can be restricted only in accordance with clause 5 of article 19. A rule which forbids the holding of fairs without assigning any reason or giving any previous notice cannot be called constitutional: *Ganpatisingh Ji v. State of Ajmer*, A. I. R. 1955 S. C. 188.

740. Right to catch fish is not property

A contractor had entered into a contract to catch fish from a certain lake which was the property of Raja of Parikul which estate came to be vested in the State of Orissa under the Orissa Estates Abolition Act, 1951. The State of Orissa refused to recognise the licences given earlier to its vesting in it and when it started re-auctioning of the rights to catch fish in the lake, it was held that there is no violation of articles 19 (1) (f) or 31 (1). It was held that even assuming that the contract to catch fish is property within the meaning of article 19, it cannot be challenged because the State by simply refusing to recognise the existence of the contract has not confiscated or acquired or taken possession of the contract as such: *Anand v. State of Orissa*, A. I. R. 1956 S. C. 17 : 1955 2 S. C. R. 919.

741. Law giving opportunity to be heard is not arbitrary.

Section 4 (h) of the Bihar Land Reforms Act of 1950 directs the Collector to give reasonable notice to the parties concerned and to hear them before action is taken under the Act. Any disposition which the Collector may order has to be with the previous sanction of the State Government and he is to dispossess on terms which may appear to him fair and equitable. This power cannot be called arbitrary. The Act being for the acquisition of Estates, the question of its imposing any unreasonable restriction on the fundamental rights of a party to realise rent does not arise: *Kanakshya v. Collector and Deputy Commissioner of Hazaribagh*, A. I. R. 1956 S. C. 63 : (1955) 2 S. C. R. 988.

742. Industrial Disputes Act, 1947, Section 10 is constitutional.

Section 10 of the Industrial Disputes Act envisages that if there is an industrial dispute or there is apprehension of any such dispute coming into existence, then the Government may refer the dispute to a Board for promoting a settlement or refer the matter to a Court for enquiry or in the other alternative the dispute can be referred to a Tribunal. These provisions were held to be not violative of article 19 (1) (f). There is no discrimination exercised by the Government when the industrial dispute is referred to one of the authorities referred to above. It is impossible to have two cases of alike nature in industrial disputes and a classification cannot be made in advance as to which case is to be referred to a particular forum. For this reason it is wrong to say that the Industrial Disputes Act of 1947 gives unguided and unfettered discretion to the Government: *N. T. F. Mills Ltd. v. Second Punjab Tribunal*, A. I. R. 1957 S. C. 329 : 1957 S. C. R. 335 : 1957 S. C. A. 640.

743. Provision preventing ejection of tenants is legal.

A provision contained in a statute which obliges the land owners to keep tenants on their lands and thereby preventing them from cultivating the land themselves cannot be called violative of article 19 (1) (f). The provisions of Rajasthan (Protection of Tenants) Ordinance (9 of

1949). were held to be constitutional as the object of the ordinance was not to put a restriction on the right of the owner to himself cultivate the lands but to prevent him when he had inducted a tenant on the land from getting rid of him without sufficient cause. A law which gives protection to the actual tiller of the land and also some security regarding the time for which he is to cultivate and which is of a temporary character, cannot be called violative of the freedom of property, guaranteed by article 19 (1) (f). The earlier decisions given by the Supreme Court in *N. B. Kher v. State of Delhi*, 1950 S. C. R. 519 dealing with reasonableness of restrictions was relied in the case: *Inder Singh v. State of Rajasthan*, A. I. R. 1957 S. C. 510 : 1957 S. C. R. 605 : 1957 S. C. A. 735.

744. Rights which a new sovereign may recognise (See para 347).

When the sovereign of a State enacts a law which creates, declares or recognises rights in the subject any infraction of those rights can be challenged in the Courts of the State even when that infraction is through the officers of the State. The expression sovereign means any authority in which the sovereignty of the State is vested. If there is any infraction by the State officers it cannot be saved by taking shelter of the fact that it is an act of State. Any actions taken should be in accordance with the authority conferred by law. But when the territories of a State are taken over by new sovereign the citizens can have recourse to municipal courts to enforce only those rights which the new sovereign recognise. The taking over of one State by another by any of the modes known to international law constitutes an Act of State and if the new sovereign refuses to recognise the rights conferred by the previous sovereign no complaint can be made regarding this. In the new set up the residents do not carry with them the rights which they possess as subjects of the ex-sovereign and as subjects of the new sovereign they have only such rights as are granted or recognised by him. An act done or declaration made by the new sovereign before the acquisition of those territories cannot be considered to possess the character of law conferring any rights on the citizens of the acquired territory. When a treaty is entered into by sovereigns of independent States whereunder sovereignty in territory passes from one to the other, a provision contained in the agreement is invested with the character of an act of State and no claim can be enforced in any Court of law. Where exemptions were given regarding income tax to a certain company which were taken away by the new sovereign it was held that there is no violation of article 19 (1) (f). *Dalmia Dabri Cement Co. Ltd. v. Commissioner of Income Tax*, A. I. R. 1958 S. C. 816 : 1958 S. C. J. 1041 : 1958 (34) I. T. R. 514 : See *State of Gujarat v. Vora Fiddali*, 1964-6 S. C. R. 461; *Pema Chibbar v. Union of India* 1966 S. C. 442 and *Firm Bansidhar v. State of Rajasthan*, A.I.R. 1967 S. C. 40.

745. Right should be Independent.

Where a fundamental right to property is dependent on some other factor and if that factor does not confer full right over the property, any action taken regarding that property cannot be said to violate article 19 (1) (f). In this case the fundamental right of the petitioner depended on whether the property of the husband of the petitioner was evacuee or not. The finding given by the Custodian General of competent jurisdiction was that the property in question was evacuee property and therefore, the husband could not transfer the same to the wife. This finding became final as

it was not challenged either before the High Court or before the Supreme Court. If any action is taken under the relevant provisions dealing with administration of evacuee property, it cannot be said to be violative of article 19 (1) (f).

The decision given in *Mahomed Amirabasi v. State of Madhya Bharat*, 1960 3 S. C. R. 138 was applied to the case: *Kunhamina Umma v. Government of India*, 1962 (1) S. C. R. 505: A.I.R. 1962 S. C. 1616.

746. Right to purchase price is property.

The right of the citizens to the purchase price in lieu of land which is taken under various Tenancy Acts is a property in respect of which the citizens have a right under article 19 (1) (f). The provisions of section (4) and (6) of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958, were held to be unconstitutional in so far as they laid down that in certain circumstances a tenant shall be deemed to be a permanent tenant with effect from the date of Taluqdari Abolition Act, 1949. This adversely effected the rights of the citizen with retrospective effect in as much as it practically wiped off a large part of the purchase price which the citizen owning the land was entitled to get. This Act was held to be not saved by article 31 (a). It was held that under the guise of changing the definition of a permanent tenant these provisions really take away a large part the right of the petitioners to get the purchase price and were held to be not sustainable: *Jaywant Singh Ji v. State of Bombay*, A. I. R. 1962 S. C. 821.

747. Burden of proving that the goods are not smuggled is in the interest of public.

Where the rule of evidence cast the burden of proof upon the person from whom specified goods have been seized to establish that they are not smuggled it cannot be said that such a provision violates article 19(1) (f). The object of such a provision is to prevent and eradicate smuggling and if for the purpose of achieving that end the Parliament makes certain provisions, which operates somewhat harshly on a small section of the public taken in conjunction with the position that without a law in that form and with that amplitude smuggling might not be effectively checked, it cannot be said that freedom to property as guaranteed by article 19(1) (f) is in any way violated. Acts innocent in themselves may be prohibited and the restrictions in that regard would be reasonable if the same were necessary to secure the efficient enforcement of valid provisions. The inclusion of a reasonable margin to ensure effective enforcement will not stamp a law otherwise valid as within legislative competence with the character of unconstitutionality as being unreasonable: *Manohar Lal v. State of Punjab*, A. I. R. 1961 S. C. 416; *Collector of Customs v. S. Chetty*, 1962 1 S. C. J. 63; 1962 3 S. C. R. 786: A. I. R. 1962 S. C. 316.

748. Contractual rights can be varied.

A law which affects or varies the rights under a contract cannot be called unconstitutional as placing or imposing unreasonable restrictions on the rights of citizens. The position in America is that there is nothing to override the power of the State to regulate the contracts. In India also a law which affects a subsisting contract by modifying its terms cannot ipso jure be treated as outside the limits laid down by clause (5) and (6) of Article 19. In this case section 15 of the Forward Contracts Act was held to be not violating of Article 19(1)(f). In

this case the earlier decision given in *State of Madras v. V. G. Row*, 1952 S. C. R. 597 was relied upon. *Raghubar Dial v. Union of India*, 1952 (3) S. C. R. 547: A. I. R. 1962 S. C. 263: (1962) 2 S. C. J. 445

749. Denial to establish claim in Civil Court if unconstitutional

The provisions of Hyderabad Atiyat Enquiries Act, 1952, the affect of which was to validate the orders of the authorities passed by various authorities between September 13, 1948 and March 14, 1952. The first date referred to the commencement of the police action in Hyderabad and the latter to the commencement of the operation of the Act. The object of these Acts was that the matters determined between these two dates should not be reopened for enquiry either before the Civil Courts or before the Atiyat Courts. During the period between the commencement of the police action and the passing of this Act, there happened many historical events which would justify the legislature to deal with the orders passed during this period as a class by themselves. Any person succeeding to a jagirdar had no right to come to a civil court for establishing the claim. After the rule of Nizam on the death of the jagirdar the property came to be vested in the State and could be re-granted to a successor in the discretion of the State. The denial to a successor to establish his claim in a civil court was held to be not violative of article 19(1)(f) : *Sikandar Jahan v. Andhra Pradesh Government*, A. I. R. 1962 S. C. 996.

CHAPTER XV

FREEDOM OF TRADE, PROFESSION, ETC.

(See Chapter XVI on Reasonable Restriction)

SYNOPSIS

- 750 Freedom of profession—General
- 751. Profession—Meaning of
- 752. Occupation
- 753. Trade
- 754. Only Citizen can enjoy the right
- 755. Tax legally imposed cannot be called violative of Article 19 (1) (g)
- 756. Refusal to recognise a stock exchange does not violate Article 19 (1) (g)
- 757. Licence for running a Hotel
- 758. Slaughter of cows, if can be banned totally
- 759. Advertisement can be banned
- 760. State can compete
- 761. Act regulating market areas does not infringe Article 19 (1) (g)
- 762. Provisions providing for subsidy not bad
- 763. Introduction of small taxes
- 764. Acceptance and Rejection of tenders does not violate article (1) (g)
- 765. Creating of monopoly rights illegal
- 766. There is no Right to carry on business at a particular place
- 767. Producers can be asked to sell their products to specified agencies
- 768. Provisions for improving the health of workers
- 769. Income-Tax Act, section 16, not ultravires
- 770. *Acquiring land for prospecting or fixing maximum prices not bad.*
- 771. Provision requiring exhibiting of minimum length of film but not fixing maximum, bad
- 772. Stocks can be frozen
- 773. Minimum wages can be fixed
- 774. Right to hold cattle fair

- 775 Private publishers have no right to get their books prescribed.
- 776 Gambling prize competition is not trade
- 777 Restriction should be imposed by law
- 778 Opening and closing hours can be fixed
- 779 Imposition of fee when valid.
- 780 Retrospective law Reasonableness can be seen
- 781 Business—Profit motive not necessary
- 782. Non tribals cannot carry on business in tribal areas
- 783. Prostitution can be banned
- 784 Some Illustrations

750 Freedom of profession General

The freedom of profession trade and business imply that every citizen has the right to choose his own employment or to take up any trade or calling. This is however subject to the limitations which the State may impose in the interest of public. These limitations are contained in clause 6 of article 19 of the Constitution. In England the doctrine of *laissez faire* is mostly implemented so far as this right is concerned i. e. the State does not interfere much with this right of the citizen. The right to carry on business would naturally include right to stop it. *Halki Singh Manufacturing Company v Union of India* 1960 3 S. C. R. 523. The right to carry on business includes right to sell one's good in the public market. *Rashid Ahmed v Municipal Board* 1950 S. C. R. 565. This right also includes the right to hold market on one's land. *Ganapati v State of Ajmer* 1955 1 S. C. R. 1065. But where a right is created by an act the exercise of that right will depend upon the conditions imposed by that act. It cannot be said that the conditions imposed violate fundamental right. *Devata Prasad v Chief Justice A. I. R. 1962 S. C. 201*. On this principle it may be said that when a legal practitioner is prohibited from appearing before a Tribunal or a candidate who want to seek election to a Municipal Body is not allowed to do so as he is holding an office under that Municipal Body there is no violation of freedom of profession. *Sakharant v State of Orissa A. I. R. 1955 S. C. 136*.

So far as rights under a grant or a contract are concerned there is no fundamental right to carry on that if the grant or the contract comes to an end or is terminated. Thus there is no right vested in a person to enter into another's man land and carry fish. *Ananda v State of Orissa* 1955 2 S. C. R. 919. Article 19 (1) (g) is against conferring of monopoly rights and if by a State action the monopoly rights are terminated and a competition is introduced there is no infringement of the right guaranteed by article 19 (1)(g). *Harnam Singh v. Regional Transport Authority* 1954 S. C. R. 571. A citizen does not enjoy a fundamental right to carry on business where ever he likes and if the bus stand from where the bus service is to commence or to terminate is altered no grievance can be made of the fact. *Ibrahim v Regional Transport Authority* 1953 S. C. R. 290. Though a citizen has a fundamental right to carry on trade or business he cannot insist that the government

should do business with him *Achhutan v State of Kerala* A I. R. 1959 S C 490

This freedom as enshrined in article 19 clause 1 (g) means that a person is free to practice any profession or to carry on any occupation, trade or business. The right to carry on business will include the right to close it. *Hathisingh Manufacturing Company v Union of India* AIR 1960 SC 923. But this right may be subjected to reasonable restrictions in the interest of general public for example when the closure of business may result in a lockout and raise an industrial dispute the legislature is competent to prevent the closure. *Hathisingh Manufacturing Company v Union of India* AIR 1960 S C. 923. This right conferred by article 19 (g) is not an absolute right but one which is liable to be restricted under clause 6. *Harnam Singh v R T A* 1954 S. C R. 371

751 Profession-Meaning of

A profession may be called an occupation which is carried on by a person by virtue of his personal qualifications. * The activities of a tout (law tout) will not come under the term profession. Similarly gambling activities are not protected by article 19. *R. M D C v State of Bombay* AIR 1957 S C. 690. There is no fundamental right to carry on a trade in commodity like Liquor and Tobacco

752 Occupation

Occupation is a trade or calling by which a person ordinarily seeks to get his livelihood. The academic pursuit of a student cannot be called an occupation though a teacher is engaged in an occupation. **

753 Trade

Trade includes any bargain or sale or any occupation or business carried on for profit. This is the broadest significance of the term. The word 'business' imply some adventure with the object of earning profit or gain. A charitable religious work may not come within the term of trade. A thing which occupies the time, attention and labour of a man for the purpose of profit is business. It has to be distinguished from something which is done as a pleasure. *State of Bombay v Hospital Mazdoor Sabha* A I R 1960 S C 610. *Commissioner of Income Tax v R W I Turf Club* 1954 S C R 289 †

754 Only Citizen can enjoy the right

The right guaranteed by article 19 (1) (g) can be enforced only by a citizen. This is the consistent view of the Supreme Court and the latest decision on the point is *Barium Chemical Ltd v Companies Law Board*, A I R 1967 S C 294. 1966 1 S C A 747, 1966 2 S C J 623. In this case the earlier decision given by the Court reported as *State Trading Corporation of India Ltd v Commercial Tax Officer*, 1964 4 S C R. 99 was considered and approved. In this connection paras 361 and 363 may also be seen.

755 Tax legally imposed cannot be called violative of Article 19

(1) (f) When a tax is imposed under a statute within the legislative competence of the legislature, it cannot be deemed to infringe the funda-

* See *In Land Revenue Commissioner v Maxse*, 1919 1 K B 647

** *Lucin v Hamlyn* 21 L T 366

† See *Smith v Anderson*, 15 Ch D. 208

mental right guaranteed by article 19(1)(g). The vires of Madhya Bharat Sales of Motor Spirit Taxation Act of 1953 came up for consideration before the court in the case of *Gopal Sugar Industries v. Sales Tax Officer*, A. I. R. 1967 S. C. 549 : 1964 1 S. C. R. 488. In this case it was conceded that the State of Madhya Pradesh had the power to levy tax on sale or purchase of motor spirit. While relying on an earlier decision in *State of Madras v. Ganon Dunkerlay and Company*, 1959 S. C. R. 379, the court observed that "levy of tax lawfully imposed under a statute within the competence of the legislature cannot be deemed to infringe the fundamental rights guaranteed by article 19 (1) (f) and (g) and whether the tax is properly levied or not in respect of a transaction is a question which falls within the ambit of the taxing authority and not of the High Court.

756. Refusal to recognise a stock exchange does not violate Article 19 (1) (f)

The stock exchange Rules framed under Securities Contracts (Regulation) Act, 1956, which enables the State to give or refuse recognition to the Stock Exchange subject to the conditions prescribed cannot be called unreasonable. The Stock Exchange Rules do not operate as a bar against a person becoming a member of the Stock Exchange subject to the rules governing the application for membership. In spite of the rules, a person has a right to do business in shares and can do business in spot delivery contracts. The rules simply lay down certain conditions for membership of a stock exchange. These restrictions are not unreasonable when the importance of a business of stock exchange in the country's national economy is taken into consideration. Having regard to the magnitude of the mischief sought to be remedied, the provisions are in the interest of general public and do not in any way contravene article 19 : *Madhubai v. Union of India*, A. I. R. 1961 S. C. 21 : 1961 1 S. C. R. 191.

757. Licence for running a Hotel.

A provision which requires a licence for conducting a business as is laid down in the Calcutta Police Act, which require licence for conducting eating houses, it cannot be called unreasonable. While construing such a provision which imposes a restriction the court should see whether on a fair reading of the section it can be said that there is no guidance for the Commissioner in the matter of granting or refusing licences and if there is sufficient material in the Act to check the arbitrary power of the authorities and where there are factors laid down for guiding the discretion of the authorities, the same cannot be called unreasonable. The discretion vested in a licencing authority to issue or not to issue a licence in this case was held to be saved by clause 6 of article 19 : *Kishan Chand Arora v. Commissioner of Police Calcutta*, A. I. R. 1961 S. C. 705 : 1961 2 S. C. A. 150.

758. Slaughter of cows, if can be banned totally

The provision of Bihar Act 2 of 1956 and U. P. Act 1 of 1956 came up for consideration before the Court in the case of *Mohd. Hanif Qureshi and others v. State of Bihar*, 1959 S. C. R. 629 and it was held that the provisions of these Act in so far as they ban cow slaughter irrespective of their age and other conditions is unconstitutional. There is no doubt that the country is in short supply of milch cattle, breeding bulls and working bulls and total ban on the slaughter of these animals

is essential in the interest of the national economy for the supply of milk, agricultural working power and manure. When restriction is imposed regarding the total ban of these animals it is a reasonable restriction in the interest of general public. A total ban, however, on the slaughter of useless cattle which involves a wasteful drain on the country's cattlefeed which is in itself short supply and which will deprive the useful cattle of much needed nourishment cannot be justified as being in the interest of the general public. The legislature, no doubt, is the best judge of what is good for the community, but a constitutional question cannot be decided on the grounds of the sentiments of a section of the people which the legislature might take into consideration while framing the law.

Various acts concerning the ban on slaughters of bulls, buffaloes came up for consideration in the case of *Abdul Hakim v. State of Bihar*, A. I. R. 1961 S.C. 448; 1961 (2) S.C.R. 610. While relying on an earlier decision in *Mohd. Hanif Qureshi v. State of Bihar*, 1959 S. C. R. 629, it was held that the acts so far as they put a total ban on slaughter without any regard to the usefulness of these animals operates as an unreasonable restrictions on the fundamental rights of the hutchers. In the Bihar Preservation and Improvement of Animals Act, the age limit for slaughter was fixed at 25 years. It was held that such a condition is unreasonable and will lead to economic disadvantage of feeding and maintaining unserviceable cattle.

The freedom to carry on business is subject to reasonable restrictions. The phrase 'reasonable restriction' in this context connotes that the limitation imposed on a person's enjoyment of the right should not be arbitrary or of an excessive nature. The word 'reasonable' implies intelligent deliberation i. e. the choice of force which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness. A restriction should strike a proper balance between the freedom guaranteed and the social control permitted. The nature of the right alleged to have been infringed and the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict : *Express Newspapers Ltd. v. Union of India* A. I. R. 1958 S. C. 578 ; 1958 S. C. R. 952.

Clause 6 of article 19 protects a law which imposes reasonable restrictions in the interests of public on the exercise of the right conferred by article 19 (1)(g). It is the duty of the court in case of a dispute to determine the restrictions imposed by the law. In determining this question, the court should not proceed on a general notion of what is reasonable in the abstract. The right which is conferred by article 19 (1) (g) would have been absolute but for the qualifying provisions contained in clause 5th of the article. The reasonableness of U. P. Prevention of Cow Slaughter Act, 1956, and C. P. and Berar Animal Preservation Act, 1949, came up for consideration before the Supreme Court and it was held that the Bihar Act in so far as it prohibited the slaughter of cows of all age and calves of cows and buffaloes male and female is constitutionally valid and in so far as it totally prohibits the slaughter of shu buffaloes, breeding bulls and working bulls without prescribing any test or requirement as to the age or usefulness, it infringes article 19 (1) (g). Similar observations were made so far as the C. P. and Berar Act of 1949 is concerned : *M. H. Qureshi v. State of Bihar*, A. I. R. 1958 S. C. 731 : 1958 S. C. J. 975.

759. Advertisement can be Banned.

An advertisement which is prohibited by section 3 of the Drugs & Magic Remedies (Objectional Advertisement) Act, 1954 came up for consideration in the case of *Hamdard Dawakhana v. Union of India*, A. I. R. 1960 S. C. 554; 1960 S. C. R. 671. It was held that these provisions are not unreasonable. The test of reasonableness of restriction is to see whether the statute under the guise of protection of public interests arbitrarily interferes with private business and imposes unreasonable and unnecessarily restrictive regulations upon lawful occupation. The prohibition so contained in the Act mentioned above does not interfere with the private business. The true intention of the Act is to stop objectionable and unethical advertisement for the purpose of discouraging self medication and under the circumstances it was held that there is no violation of article 19 (1) (g). The provisions of the Constitution concerning fundamental rights should be construed broadly and liberally in favour of the citizens. The interpretation should advance the cause of citizens and should protect the fundamental rights. The only limitation being expressly laid down in clause 6 of the article. In the light of these circumstances the court came to the conclusion that there is no infringement of any fundamental right.

760. State can compete with citizens.

Article 19 (6) does not prohibit the the State from carrying on business in competition with the citizens. Indeed article 19 (6) by providing that nothing in article (19) (g) shall affect the application of any law in so far it relates to or prevent the State from making any law relating to the carrying on by the State of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise, would seem to indicate that the State may carry on any business either as a monopoly, complete or partial, or in competition with any citizen and that would not have the effect of infringing any fundamental rights of citizens. Proviso to section 47 (1) of the Motor Vehicles Act, 1939 which says that preference will be given to the Co-operative Societies in the matter of the grant of permits does not mean that the Co-operative Societies stand at a position better than the citizens vis-a-vis the State: *Prabhani Transport Co-operative Society v. Regional Transport Authority*, 1960 S. C. 801.

761. Act regulating market areas does not infringe Article 19 (1) g

The Madras Commercial Crops Markets Act, 1933, was the result of long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms thereby eradicating the scope of exploitation. Such a statute cannot be said to create unreasonable restrictions on the citizen's right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and over reach the scope of the object to achieve which it is enacted. The Act, the rules and the by laws provide for facilities for correct weighing and for other storage accommodation. Such a provision cannot be attacked as violating fundamental rights contained in article 19 (1) (g): *Arunachala Nadir*, A.I.R. 1959 S.C. 300; 1959 S.C.J. 297; (1959) 1 Mad. L. J. (S. C.) 133.

762. Provisions providing for subsidy not bad.

The vices of Sugar Export Promotion Act, 1958 came up for considera-

tion in *Lord Krishna Sugar Mills Ltd. v. Union of India*, A.I.R. 1959 S. C. 1124. It was held that there was no ground for holding that there is any infringement of fundamental rights of the Sugar Manufacturers. The restriction was not unreasonable because sufficient arrangement existed for the protection of factory owners which save them from any loss because the loss which it suffers by the export of sugar was to be borne by the consumers in India and not by the producers as the idea was to save the foreign export which served the national interest and which ultimately stabilised national economy, by earning foreign exchange; it was held that the provisions are constitutional. Merely because there is some delay in making the payments, it was held that such a consideration cannot nullify an act.

763. Introduction of small taxis.

When small taxis with lower rates were allowed to ply, it was held that there was no breach of the rule of equality before law. The fact that some of the existing licence-holders were affected did not constitute an infringement of Article 19 (1) (g) because they are not prevented from plying smaller taxis : *Harnam Singh v. Regional Transport Authority, Calcutta*, (1954) S. C. R. 371; A. I. R. 1954 S. C. 190 : 1954 S.C.J. 46 : (1954) I M. L. J. 79 : 1954 S. C. A. 47.

A citizen has no fundamental right to ply motor vehicles on public highways under article 19 (1) (g). Any infringement of the right to ply motors by the State can be justified provided it is covered by article 19 (6). *Raman & Raman Ltd. v. State of Madras*, A I.R. 1959 S. C. 694 : 1959 S. C. J. 1156.

764. Acceptance and rejection of tenders does not violate article (1) (g).

The acceptance of a tender and its subsequent cancellation does not infringe article 19 (1) (g). In the case under article 32, the petitioner challenged the cancellation of tenders which he held for the supply of milk to a government hospital ever since 1946. When one person is chosen in preference to another the aggrieved party cannot claim the protection of article 14 because the choice of the person to perform a particular contract must be left to the government. Breach of the contract, if any, may entitle the persons concerned for appropriate relief by way damages, but to complain that there has been a deprivation of the right to practice any profession or to carry on any occupation, trade or business, such as is contemplated by article 19 (1) (g) is wholly misconceived. The court further observed that article 32 is not the proper remedy in such a case. A citizen, if aggrieved, should claim damages for breach of contract : *C. K. Achhutan v. State of Kerala*, A. I. R. 1959 S. C. 490.

765. Creating of monopoly rights illegal

Where a citizen was carrying on with the business of wholesale of fresh vegetables and where the town area committee auctioned and gave a contract for sale and vegetables to another person and the petitioner was prohibited from carrying on his business it was said that the creating of monopoly right in favour of one individual amounts to infringement of fundamental rights guaranteed by Article 19 (1) (g). It was further argued before the Court that there is no valid law under which such restriction could be imposed. The Court came to the conclusion that in the absence of any valid law authorising the Town area committee to prohibit any

citizen from carrying on with his business would operate as an illegal restraint, and would be violative of article 19(1)(g) *Mohd Yasin v Town Area Committee Jallabad*, A I R. 1952 S C 115

766 There is no right to carry on business at a particular place

There is not fundamental right vested in citizen to carry on business where ever he chooses. The right to carry on business is subject to reasonable restriction which the executive might impose in the interest of public. Where the transport authorities altered the starting and stopping places of all public service vehicle it was said that there is no violation of Article 19 (1) (g). The restriction may have the effect of eliminating the use to which the stand has been put hitherto but the restriction can not be regarded as being unreasonable if the authorities imposing such restrictions has the power to do so. Whether such an action is conducive to public convenience or not is a matter with which the court is not concerned. It is the executive authority whose opinion in this matter is final and the courts can not substitute its own view in the matter. *T B Ibrahim v Regional Transport Authority* A.I.R. 1953 S C 79

767. Producers can be asked to sell their products to specified agencies

The provisions of U P sugarcane (Regulation of Supply and Purchase) Act 1953 by which power was given to the Cane Commissioner under section 15 for declaring reserved or assigned areas was held to be constitutional as it was held to be not uncontrolled or unfettered. The restriction which was imposed was that the cane growers were to sell their products to specified co-operative societies. This provision was held to be not in any way violative of 19(1)(b) *Ramji v State of U P* A I R 1956 S C 676

The powers which are given to a cane Commissioner under section 15 of the U P Sugarcane Regulation of Supply and Purchase Act for declaring reserved or assigned areas is well defined and cannot be called unguided. Before any action is taken the Commissioner is to consult the Cane Growers' Co-operative Society or the factory concerned and the orders passed by the Cane Commissioner are subject to appeal to the State Government. This power is not absolute and therefore it does not fall within the mischief of article 19 (1) (g) *Tikaram v State of U P* AIR 1956 S C 676 1956 S C R 393

768 Provisions for improving the health of workers

The Punjab Trade Employees Act of 1940 the purpose of which is to improve the health of the workers who form an essential part of the community and in whose welfare the community is vitally interested is not ultra vires. The purpose of this legislation is in effect to control the manner in which business should be carried or regulated in the interest of the health and welfare not merely of those employed in an industry or a business but all those who are concerned with it in any manner. Simply because a person is not employing any other person and is conducting the business himself will not stamp a law otherwise valid and within legislative competence with the character of unconstitutionality. The provision which is applicable even to a person who is himself carrying on the trade would be saved on the ground that the provision is for administrative convenience. *Manohar Lal v State of Punjab* A I R 1961 S C 418 1961 2 S C R. 343 1963 Punjab Law Reporter 66. *Manohar Lal v State* 1951 S C R. 671 Similarly, if the idea is to improve the condition

of working classes and with that end in view the State Government imposes a condition that a workman will be entitled to bonus for past period, there is nothing which can be called illegal; *State of U. P. v. Basti Sugar Mills*, 1961 2 S. C. R. 330 : 1960-61 19 F. J. R. 211.

769. Income tax Act, Section 16 not ultravires.

The provisions of section 16 (3) (a) (i) (ii) of the Income Tax Act 1922, were held to be intra vires of the Constitution. In this case the wife and the minor sons were admitted to the benefit of partnership. There was a provision in partnership deed to give interest on amount of advance given by partner as loan to the firm. The amounts of profit falling to the share of mother and minor sons were allowed to accumulate in accounts of partnership without any arrangement for keeping these amounts as deposits with or loans advanced to the firm. The partners decided to give interest on accumulative profits. It was held that the interest arose and accrued indirectly to the mother and minor sons because of their capacity mentioned in section 16. Since the decision to give interest did not change the nature of funds, they remained accumulated profits. The taking into consideration of these amounts for assessment under the Income Tax Act is not violative of article 19(1) (f) (g) : *S. Srinivasan v. Income Tax Commissioner, Madras*, A I R 1957 S. C. 517 ; 1957.1 S. C. J. 174 ; 63 I.T.R. 273.

770. Acquiring Land for Prospecting or Fixing maximum price not bad.

Sections 4, 5 and 6 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, cannot be said to be violative of article 19 (1) (g). Under this act, by a notification, virgin lands and also dormant colleries can be acquired for the purpose of prospecting. The period of this mining lease extends only to two or three years. It was held that there is nothing unconstitutional in such a provision : *Mahabir Prasad v. Durga Dutt*, A.I.R. 1961 S. C. 990 ; 1961.1 S. C. J. 569. Similarly, Iron and Steel Control of production and Distribution Order, 1941, which fixes the maximum prices does not violate any right to carry on trade or business : *Bhagwati Saran v. State of U. P.* 1961 2 S. C. J. 217 : A. I. R. 1961 S.C. 927. See also *Union of India v. Bhanu Mal Guljari Mal Ltd.* 1960-2 S.C.R. 627.

771. Provision requiring Exhibiting of minimum length of film but not fixing maximum, bad.

Where under the Cinematograph Act, the licence imposes a condition to show approved films of minimum length but the maximum length was not fixed, it was held that the power is unregulated and it was not a reasonable restriction under clause 6 : *Sheshdhari R. M. v. D. M. Tinjore*, A. I. R. 1957 S. C. 747 ; 1955 S. C. R. 686 ; 1954 S. C. A. 1214, 1954 S. C. J. 842.

772. Stocks can be frozen.

Where clause 25 of the Rajasthan Foodgrain Control Order Provided that the stock may be frozen at any time, it was held to be valid but the further provision for procurement at fixed rate was declared to be void : *State of Rajasthan v. Nath Mal*, A. I. R. 1954 S. C. 307 : 1954 S. C. R. 882 ; 1954 S.C.A. 347 ; 1954 S. C. J. 404.

773. Minimum Wages can be fixed.

Minimum Wages Act which provided for the minimum wages to be

given to the labourers was held to be reasonable and protected and cannot be challenged as the restrictions imposed are in the interest of general public under article 19 (6): *Vijay Cotton Mills Ltd. v. State of Ajmer*, A. I. R. 1953 S. C. 3; 1955 (1) S. C. R. 752.

774. Right to hold cattle fair.

Every body has a right to hold cattle fair on one's own land. Where the rule was made under Ajmer Lands Regulations of 1877 which empowered the District Magistrate to make his own system for conservancy and sanitation, it was held that the power given to the District Magistrate is absolute and was declared to be bad and further where the powers were given to the District Magistrate to revoke the licence, it was said that the powers being arbitrary, it was bad: *Rajit Ganpati Singh v. State of Ajmer*, A. I. R. 1955 S. C. 188; 1955 (1) S. C. R. 1065.

775. Restriction should be Imposed by Law.

Restrictions on import if not authorised by law, cannot be regarded as reasonable restriction: *State of Kerala v. P. J. Joseph*, A. I. R. 1958 S. C. 296. A writ will lie where a tax is imposed on trade or business without any authority: *Kailash Nath v. State of U. P.*, A. I. R. 1957 S. C. 780.

Where under the export control order of 1958 an order was given to regulate export through specialised agency by notification dated 26th May 1958, the result of which was that the export of manganese was regulated, it was held that the control order does not impose unreasonable restriction: *Daya v. J.C.C. of I and E.*, A. I. R. 1962 S. C. 1766.

775. Private publishers have no right to get their books prescribed

Private publishers have no fundamental right in the publication of text books. Where the executive Government took upon itself the selection of school text books, it was held that there is nothing bad about it: *R. S. Kapur v. State of Punjab*, 1955 (2) S. C. R. 225.

776. Gambling prize competition is not trade

Gambling prize competitions are not regarded as trade or commerce. Thus Bombay Lotteries and Prize Competition Control and Tax Act of 1948, the object of which was to declare gambling as extra commercialism, it was held that these trades are not entitled to any protection under article 19 (1) (g) or article 301: *State of Bombay v. R. M. D.*, A. I. R. 1957 S. C. 639.

Where persons carrying gambling competition argued that prize competition involve substantial skill it was held that the restrictions imposed by Lotteries and Prize Competition Control and Tax Act were not saved by article 19 (6): *R. M. D. C. v. U. I.*, A. I. R. 1957 S. C. 629.

777. Restriction should be imposed by law

A writ will lie where a tax is imposed on trade or business without any authority: *Kailash Nath v. State of U. P.*, A. I. R. 1957 S. C. 790.

778. Opening and closing hours can be fixed.

Where the Punjab Shops and Commercial Establishments Act of 1958 provided for the hours of work of employees and also specified the opening and closing of hours of shops, it was held that the legislation is protected by article 19 (6): *Ram Dhan Dass v. State of Punjab*, A. I. R. 1961 S. C. 1559; 1962 (1) SCR 852; 1961 (1) SCJ. 257.

779. Imposition of fee when valid

When under the Bombay Agricultural Produce Market Act of 1939, a fee was levied by Market Committee under section 11, it was held that this levy is not in the nature of sales tax, but because maximum fee was not prescribed, levy of fees in bylaws was declared to be ultravires. But rule 65 and 67 which authorised the market committee to grant a licence was held to be not ultravires. *Mohammed Hussain v. State of Bombay*, A.I.R. 1962 S.C. 97 : 1962 (2) S.C.R. 159.

Where under the rules framed under Custom House Agents Licensing Rules, rule 10 provided for discretion in such a way that the collector could reject a candidate without assigning any reason, it was held to be an unreasonable restriction upon the right of agent to carry on their vocation. It was further held that the imposition of a renewal fee of Rs. 50/- is not a fee but a tax and was consequently declared to be bad : *Chander Kant v. Jasjit Singh*, A.I.R. 1962 S.C. 204 : 1962 (3) S.C.R. 188, 1962 (2) S.C.J. 507.

780. Retrospective Law--Reasonableness can be seen

The legislature is fully competent to pass a law and make its provisions retrospective. The Courts are nevertheless fully entitled to see to the reasonableness of the restriction imposed by such a retrospective statute and to consider the effect of the said retroactive operation of the law in respect of legislative competence of the legislature. A party is open to contend that the restriction imposed by certain statute are so unreasonable that they should be struck down on the ground that they contravene the fundamental right guaranteed under article 19 (1) (f) (g). Merely because a law is retrospective in operation, it can not be said that it is outside the legislative competence of the said legislation, particularly, where in its essential feature, a taxing statute is within the legislative competence of the legislature which passed it by reference to the relevant entry in the list. Thus when Bihar Finance Act of 1950 was declared unconstitutional by the Supreme Court, and the State of Bihar by an ordinance No. 2 of 1951, made the provisions of the earlier Act of 1950, valid retrospectively and when subsequently the provisions of the above ordinance were incorporated in the Bihar Taxation on Passenger and Goods Act, 1961, it was challenged as ultravires. It was held by the Supreme Court that there was nothing unconstitutional about the retrospective operation of the Act, as the scheme of the Act for the recovery and levy of the tax was valid under entry 56 of second list of seventh schedule, so far as the future recoveries were concerned. The tax recovered retrospectively like the one which would be recovered prospectively still continues to be a tax on passengers and it adopted the same machinery for the recovery of the tax both as to the past as well as to the future. It was further held that the nature of the tax in the present case was the same both in regard to prospective operation. The argument that the retrospective operation of the act was beyond the legislative competence of the Bihar legislature was rejected; *Rai Ram Krishna v. State of Bihar*, A. I. R. 1963 S.C. 1661.

781. Business, profit motive not necessary.

Profit motive is not necessary to constitute a business. Running of Railways is a business even if it is carried by the Government. The term carries on business will thus apply even to the Government.

The place of business will be the principle place of Railway Administration : *Union of India v. Ladulal Jain*, A. I. R. 1963 SC 1681.

782. Non-tribals cannot carry on business in tribal Areas.

Where a citizen who was a non-tribal started business in the tribal areas of Mizo district in 1957 under a temporary licence issued by the Mizo District Council which was cancelled subsequently on the expiry of the terms contained in the licence and an order was passed under section 3 of the Lushai Hills District (Trading by non tribals) Regulation 2 of 1953, under which the petitioner was directed to remove his properties, it was held that such a provision does not violate article 19(1)(g). The effect of this section is that if a non-tribal wishes to carry on trade in tribal areas he is required to take a licence. The refusal to issue a licence would result in total prohibition against him from carrying on trade, it was held that this act is not ultra vires of article 19(1)(g) because the policy behind the act is to safeguard tribals from exploitation by non-tribals : *Hari Chand Sarda v. Mizo District Council*, A. I. R. 1957 S. C. 829.

783. Prostitution can be banned.

The reasonableness of a restriction depends upon the values of one's life in society, the circumstances obtaining at a particular point of time when the restriction is imposed, the degree and the urgency of evil sought to be controlled. If in a particular locality the vice of prostitution is degrading those who live by prostitution and demoralising others who come into contact with them, the legislature may have to impose severe restrictions on the right of the prostitute to move about and to live in a house of her choice. If the evil is rampant it may also be necessary to provide for deporting the worst of them from the area of their operation. The magnitude of the evil and the urgency of the reform may require such drastic remedy. It cannot be gainsaid that the vice of prostitution is rampant in the various parts of the country and there cannot be two opinions on the question of controlling and regulating it. Section 20 of the Suppression of Immoral Traffic in Woman and Girls Act which imposes certain restrictions comes within the expression 'reasonable restriction' and is constitutional : *State of Uttar Pradesh v. Kaushalya*, 1964 S. C. D. 167 : A. I. R. 1934 S. C. 418 : 1964 1 S. C. W. R. 276.

784. Some Illustrations

Where a Jagirdar gave contract to petitioner to cut forest in a Jagir and where the Forest Officer extended the period of contract in an unauthorised manner and the Government confiscated it, it was held that there is no relief which can be granted under article 32 because the petitioner's right to dispose of property or his right under Article 19(1)(g) was not infringed as there was no transfer of forest by Government to the contractor : *Rameshwar Prasad v. Commissioner L. R. Jagir*, A. I. R. 1959 S. C. 498. Where electric agency was sanctioned and the condition was that the property of the grantee would be acquired, it was held that there is nothing unreasonable and article 19(1)(f) and (g) and (5) cannot be invoked : *The Okara Electric Supply Co. v. State of Punjab*, A. I. R. 1960 S. C. 284; 1960 (2) S. C. R. 239. Where the imports were regulated under para 6(b) of Imports Control Order 1959 and persons asking for licence were refused because they had not made applications through

special or 'specialised agencies, it was held that there is no violation of Article 19(1)(g) and the restriction was presumed to be in the interest of general public : *The Glass Chatons Import Assn. v. Union of India*, A. I. R. 1961 S. C. 1514 : 1962 (1) S. C. R. 862 : 1962 (2) S. C. J. 213.

Procedure laid down in Patiala Recovery of State dues Act for settlement of disputes between Patiala State Government and its customers, does not infringe article (19) (1) (f) (g) : *Lachman Dass v. State of Punjab*, A. I. R. 1963 S. C. 222. Where municipal law prohibit persons from carrying trade or business within municipal limits and where the by-laws provided for grant of monopoly to contractor to deal with wholesale business in a vegetable market, it was held that the restrictions are unreasonable, and, therefore, void, as they infringe article 19(1)(g). *Rashid Ahmed v. M. V. K. Rana*, A. I. R. 1950 S. C. 163 : 1950 S. C. R. 556, 1950 S. C. J. 124. Similarly, where there was illegal imposition of licence fee on a wholesale dealer in vegetables and fruits by Town Area Committee and there was a restriction imposed on the growers of vegetables as to the use of public street who came to wholesale dealers, shop to get their produce auctioned, it was held that the restrictions are unreasonable as they infringe the right to carry on business : *Mohammad Yasim v. Town Area Committee*, A. I. R. 1952 S. C. 115 : 1952 S. C. R. 57 : 1952 S. C. A. 237 : 1952 S. C. J. 162.

Where the transport authority altered the starting and terminal place of public service vehicles and the Bus stand of petitioner was no longer a starting place, it was held that there is nothing unreasonable about it because a citizen has no fundamental right to carry on business wherever he chooses. It must be subject to reasonable restriction in the interest of public convenience : *T. B. Ibrahim v. R. T. A.* A. I. R. 1953 S. C. 79 : 1953 S. C. R. 290 : 1953 S. C. A. 277, 1953 S. C. J. 31.

Right to pursue any lawful trade is subject to the consideration as to safety, health, peace and morals of the community and the legislature is fully competent to regulate the sale of intoxicating liquor and where monopoly is kept on the auction and sale of wines it was held that the restriction imposed is reasonable : *C. B. Barucha v. Excise Commissioner*, A. I. R. 1954 S. C. 220 : 1954 S. C. R. 873 : 1954 S. C. A. 256 : 1954 S. C. J. 246. There is no presumption of constitutionality where an enactment on the face of it violates fundamental right : *Shaghir Ahmed v. State of U. P.* A. I. R. 1957 S. C. 728, 1955 S. C. R. 707, 1954 S. C. A. 819..

The proviso to section 9(1) of the Bar Council Act which restricted the right to enrol as an Advocate was held to be void : *V. C. Mitra v. Chief Justice*, A. I. R. 1954 S. C. 524, 1954 S. C. R. 395. Where small taxis were introduced at a cheaper rate, it was held that there is no violation of article 19(1)(g) : *Harnam Singh v. R. T. A.*, A. I. R. 1954 S. C. 190 : 1954 S. C. R. 971 : 1954 S. C. A. 47 : 1954 S. C. J. 46. Where the U. P. District Board Act prohibited holding of markets, it was held that section 174 (2) and the by-laws made under the above Act contravened article 19 (1) (g) and is, therefore, unconstitutional : *Tahir Hussain v. D. V. Moosurie*, A. I. R. 1957 S. C. 630.

CHAPTER XVI
REASONABLE RESTRICTIONS
 SYNOPSIS
 GENERAL

785	What is a restriction	
786	Who can impose restrictions	
787	Principles governing reasonableness	
788	Substantive reasonableness	
789	Procedural Reasonableness	
790	Restriction must have a relation to the object	
791	Restriction must not be excessive	
792	Restriction and prohibition	
793	Total prohibition	
794	Retrospective effect and reasonableness	
795	Natural justice and reasonableness	
796	Subjective satisfaction of Executive and Reasonableness.	1
797	Unfettered discretion	
798	Possibility of misuse	1
799	Emergency and Reasonableness	
800	Burden of Proof and Reasonableness	
801	Restriction and Punishment	
802	Remoteness of restriction	
803	Excessiveness	
804	Restriction should be direct	

**REASONABLE RESTRICTION AND FREEDOM
 OF SPEECH**

(See Chapter IX on Freedom of Speech)

805	General
806	In the Interest of
807	Sovereignty and integrity of India
808.	Security of State
809	Friendly relations with foreign States

- 810. Public Order
- 811. Decency or Morality
- 812. Contempt of Court
- 813. Defamation
- 814. Incitement to an offence
- 815. Sedition
- 816. Revolution and war

REASONABLE RESTRICTION AND FREEDOM OF ASSEMBLY

(See Chapter X on Freedom of Assembly)

- 817. General

REASONABLE RESTRICTION AND FREEDOM OF ASSOCIATION

(See Chapter XII on Freedom of Association)

- 818. General

REASONABLE RESTRICTION AND FREEDOM OF MOVEMENT

(See Chapter XI on Freedom of Movement)

- 819. General
- 820. Interest of the general public
- 821. Public Health
- 822. Public Security
- 823. Public Safety
- 824. Public order
- 825. Public morals
- 826. Protection of the interests of the Scheduled Tribes
- 827. Externment
- 828. Duration of Externment
- 829. Removal from India
- 830. Grounds, if to be communicated

REASONABLE RESTRICTION AND FREEDOM OF RESIDENCE

(See Chapter XIII on Freedom of Residence)

- 831. Re entry from foreign countries

REASONABLE RESTRICTION AND RIGHT OF PROPERTY

(See Chapter XIV on Right to Property)

- 832. General
- 833. What is a restriction on the freedom of property
- 834. In the interests of
- 835. In the interests of Scheduled tribes
- 836. Prohibition
- 837. Pre-emption
- 838. National Economy
- 839. Rent control
- 840. Agrarian reforms
- 841. Debt recovery laws
- 842. Evacuee property
- 843. Essential commodities
- 844. Right under a contract
- 845. Requisition
- 846. Fixing prices
- 847. Temporary deprivation
- 848. Religious property
- 849. Taxing laws

REASONABLE RESTRICTION AND FREEDOM OF TRADE, PROFESSION ETC.

(See Chapter XV on Freedom of Trade, Profession etc.)

- 850. General
- 851. Interest of the general public, some instances
- 852. Competition
- 853. Regulation of essential commodities
- 854. Social welfare legislation
- 855. Intoxicants
- 856. Labour laws
- 857. Import Export Regulation
- 858. Monopoly
- 859. Permits
- 860. Licences
- 861. Taxation
- 862. State Trading

863 Nationalisation

864 Clause 6, if Retrospective

GENERAL

785 What is a restriction

A restriction is that which is imposed by law and which the citizens have no alternative but to obey. Where a person enters into a contract the result of which is that some restrictions are placed on that person which may be called as self imposed restrictions, a complaint can not be made that the restriction so coming into effect is unreasonable. *Kharak Singh v State of U P* A I R 1953 S C 1293. The legislature cannot impose restriction in an indirect manner. The power of the legislature is subject to the fundamental rights and the legislature cannot take away indirectly what it cannot take away or abridge directly. In *re Kerala Education Bill* A I R 1958 S C 935. What the courts have to do in such cases is to find out what the effect of the legislation is. An effect which is remote may not be hit and its validity may not be challenged. *Express News Papers v Union of India* A I R. 1958 S C 578.

The freedom to enjoy rights is subject to reasonable restrictions. The phrase reasonable restriction in this context connotes that the limitation imposed on a person's enjoyment of the right should not be arbitrary or of an excessive nature. The word reasonable implies intelligent deliberation, the choice of force which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness. A restriction should strike a proper balance between the freedom guaranteed and the social control permitted. The nature of the right alleged to have been infringed and the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict. *Express Newspapers Ltd v Union of India* A I R. 1958 S C 578. 1958 S C R 952.

Clause 6 of article 19 protects a law which imposes reasonable restrictions in the interests of public on the exercise of the right conferred by article 19 (1)(g). It is the duty of the court in case of a dispute to determine the restrictions imposed by the law. In determining this question the court should not proceed on a general notion of what is reasonable in the abstract. The right which is conferred by article 19 (1) (g) would have been absolute but for the qualifying provisions contained in clause 5th of the article. The reasonableness of U P Prevention of Cow Slaughter Act 1956 and C P and Berar Animal Preservation Act 1949 came up for consideration before the Supreme Court and it was held that the Bihar Act in so far as it prohibited the slaughter of cows of all age and calves of cows and buffaloes male and female is constitutionally valid and in so far as it totally prohibits the slaughter of the buffaloes, breeding bulls and working bulls without prescribing any test or requirement as to the age or usefulness, it infringes article 19 (1) (g). Similar observations were made so far as the C P and Berar Act of 1949 is concerned. *M H Qureshi v State of Bihar* A. I R 1958 S C 731. 1958 S C J 975.

The restriction must be reasonable and the reasonable restrictions contemplated by each clause has to be for a particular purpose. There are always two tests for determining the reasonableness of a particular restriction: (1) The restriction should be reasonable (2) and it should be for the particular purpose mentioned in the relevant clause authorising the restriction. If a law is declared to be unreasonable an order which has been made under the law although reasonable, will not be protected. Conversely where the law is reasonable and valid, the reasonableness or otherwise of the order passed under the law becomes immaterial so long as the order can be sustained under the law unless it is open to attack on the ground of malafide. The test in all such cases is not what is actually done but what can actually be done under the law. And it is for the Courts to determine the reasonableness of the law. In examining the reasonableness of legislative restrictions on fundamental rights, the Courts are to apply an objective standard and not a subjective one. Whether restrictions on a particular trade are reasonable or not will depend upon the nature of the trade: *Shigir Ahmed v. State*, A. I. R. 1954 S. C. 728. What is meant by reasonable restriction is that the limitation imposed on the enjoyment of a right should not be excessive or arbitrary in nature. It should not be beyond what is required in public interest. The word 'reasonably' necessarily imply intelligent care and deliberation. Where the right is invaded in an arbitrary manner it cannot be said that it contains the quality of reasonableness. A proper balance must be struck between the freedom granted in article 19(1)(g) and the social control permitted by clause 6 of article 19: *Chintaman Rao v. State of Madras* A. I. R. 1951 S. C. 116; *Express News Paper v. Union of India*, A. I. R. 1958 S. C. 578.

The test of reasonableness is to be applied to each individual statute and it is not possible to lay down any abstract principle or a general pattern of reasonableness applicable to all cases: *State of Madras v. V. G. Row*, A. I. R. 1952 S. C. 196. The purpose of the Act, the conditions prevailing in the country, the duration of the restriction are some of the factors which must be taken into consideration while determining the reasonableness of a particular statute: *Virendra v. State of Punjab*, A. I. R. 1957 S. C. 894. A restriction cannot be regarded as unreasonable simply because it is more drastic than that imposed by legislature in another State. The procedural as well as the substantive aspects of the impugned law should be taken into consideration in determining the reasonableness of a particular piece of legislation: *Dr. Khare v. State*, A. I. R. 1950 S. C. 211; *Jaswant Rai v. State of Bombay*, A. I. R. 1956 S. C. 579. Where no provision is made for affording an opportunity to make representation or where no provision is made for giving notice to the party concerned, these will be good grounds for declaring a legislation to be unreasonable. Where the restriction imposed is greater than the circumstances warrant, it will be bad in law: *Karnail v. State*, A. I. R. 1954 S. C. 204. A person has no fundamental right to be heard through a lawyer. Where circumstances are such for example if there is a natural calamity like an earthquake or a flood, then the necessary pre-requisite that opportunity is to be given for hearing a party may not be strictly followed. Where a restriction is forbidden to be tested in a court of law the courts are generally inclined to treat the restriction as unreasonable.

Restriction which is vague and uncertain will be void. Where, absolute unlettered and unregulated discretion is vested in any executive authority then the courts are inclined to consider *prima facie* such restrictions, as repugnant to the principles of natural justice : *State of W. B. v. Anwar Ali*, A. I. R. 1952 S. C. 75 ; *Ebrahim v. State*, A. I. R. 1954 S. C. 229. Thus where the question is whether the offence, has, been committed or not and this is left to the executive for determination, this, will be considered as unreasonable. The general principle is, that the fundamental rights cannot be made subject to absolute discretionary control of an administrative or executive authority. Where a person is deprived of his property for an indefinite period, merely on the subjective determination of an executive officer then such a law cannot be called reasonable : *Ragbir Singh v. Court of Wards*, A. I. R. 1953 S. C. 373. But where the authority is vested in a suitable officer to take quick action in the time of emergency, then it should not be regarded as unreasonable. Thus where an officer was vested with unfettered discretion to approve or not to approve a selective site for liquor shop, it cannot be called as unreasonable : *Dr. Khare v. State of Delhi*, A. I. R. 1950 S. C. 211. Similarly, unfettered discretion if vested in an official to refuse permission under rent control legislation to sue, for eviction of his tenant, is not bad. But where a person vested with discretion, is not fit for exercising such a discretion, then the law becomes unreasonable. Where the discretion is not open to examination by Court of law, then it will be regarded as unreasonable. Where the provision is beyond the power of the body which made it, then it is unnecessary to decide the question of reasonableness : *Yasin v. Town Area Committee*, A. I. R. 1952 S. C. 115.

786. Who can impose restrictions

The State while acting and exercising its legislative powers may impose restrictions on the fundamental rights of the citizens. In India the restrictions may be imposed not only by the States and the Union, but also by other local authorities which exercise the power of making laws : *Rashid v. Municipal Board*, 1950 S. C. R. 566. The language used in article 19 is very clear and it gives powers to impose restrictions only by law made by an authority competent to do so : *Tahir v. District Board*, A. I. R. 1954 S. C. 630. A restriction should be valid which means it should be saved by one of the clauses mentioned in article 19 and secondly it must be imposed by a body competent to do so : *Yasin v. Town Area Committee*, 1952 S. C. R. 572.

787. Principles governing reasonableness.

The expression reasonable restrictions as occurring in Article 19 has to be interpreted by the courts and whether a particular act is covered by the term or not is to be decided by the Courts. It is not necessary that the Act should provide safeguards against possible misuse of executive authority : *Gurbachan v. State of Bombay*, 1952 S. C. R. 737. The court is not concerned with the necessity or the wisdom of policy underlying a legislation. The court is only to see whether or not the restriction imposed is in excess of the requirement and it is further to see that the restrictions are not being imposed in an arbitrary or capricious manner. Where the legislature remains within its limits and does not exceed the constitutional limitations the courts must uphold the law. The question whether the law is to the liking of the court

or not is an irrelevant consideration : *Chintaman Rao v. State of Madhya Pradesh*, 1950 S. C. R. 759 ; *State of Bihar v. Kameshwar*, A. I. R. 1952 S. C. 252. The court if it comes to the conclusion that the law is unreasonable has no other alternative but to strike them off from the statute book. The court cannot act or assume the roll of legislature and reconstruct the law. As the expression reasonable restriction tries to maintain a balance between the freedom guaranteed and the social control permitted it is necessary that the restriction should not be in excess of the object and a balance should be maintained between the right guaranteed and the restriction imposed. The reasonableness of the restriction has to be determined objectively : *Hamdard Dawakhana v. Union of India*, A. I. R. 1960 S. C. 554. No abstract or general standard can be laid down for determining the constitutionality of a statute. The nature of the right infringed, the urgency of the evil sought to be removed, the prevailing conditions in the society are some of the factors which should guide a judicial mind while going into the question of reasonableness : *State of Madras v. Row*, 1952 S. C. R. 597; *Virinder v. State of Punjab*, A. I. R. 1957 S. C. 896 ; *Mineral Development Corporation v. State of Bihar*, A. I. R. 1960 S. C. 46. The condition prevailing in a society may call for drastic remedies and in the light of these circumstances the court should come to a decision regarding the reasonableness or otherwise of a statute.

The restriction imposed should be reasonable both from procedural and substantial points : *Dr. Khare v. State of Delhi*, 1950 S. C. R. 519 ; *Gurbachan v. State of Bombay*, 1952 S. C. R. 737 ; *Krishna Sugar Mills v. Union of India*, A. I. R. 1959 S. C. 1124. The Directive Principles of State policy can also be considered while determining the reasonableness of a restriction : *State of Bombay v. Balsara*, A. I. R. 1951 S. C. 318.

788. Substantive reasonableness.

A restriction which is imposed by legislature should be reasonable from substantive point of view as distinguished from procedural reasonableness. While determining substantive reasonableness the nature of the right alleged to be violated, the purpose behind the legislation; the extent and urgency of the evil sought to be removed, the prevailing conditions at the time are some of the factors which are taken into consideration. A law which imposes a restriction in excess of the mischief or a law which is vague or which does not provide for giving of notices will be bad from substantive point of view : *Chintaman Rao v. State of Madhya Pradesh*, 1950 S. C. R. 759 ; *State of Madhya Pradesh v. Baldeo*, A. I. R. 1961 S. C. 293. Whether a law is permanent or temporary is not the determining factor while judging the reasonableness : *Khare v. State of Delhi*, 1950 S. C. R. 519.

789. Procedural Reasonableness.

Procedural reasonableness is concerned with the machinery which enforces the restrictions. A restriction which may be valid substantively if does not satisfy the test of procedural reasonableness the same will be struck off. A law which authorises the executive to interfere with the enjoyments of proprietary rights on subjective satisfaction or which impose a collective fine may be bad from procedural point of view : *Raghubir v. Court of Wards*, 1953 S. C. R. 1049; *Virindera v. State of Punjab*, 1957 S. C. R. 368.

790. Restriction must have a relation to the object.

The test of reasonableness wherever prescribed should be applied to each individual statute and no abstract standard can be laid down which may be applicable to all cases. The nature of the right infringed, the purpose behind the legislation, the urgency of the evil sought to be removed and relation between the object and the restriction are some of the things which should be taken into consideration while determining the substantive reasonableness. The term interest of only signifies the closeness of relationship between a right and restriction and the object sought to be achieved; *Sodhi v. State of Pepsu*, A. I. R. 1954 S.C. 276. Where a limitation is imposed in the interest of public order a relation must be established between the restriction and the object sought to be achieved. Where a law purports to authorise the imposition of restriction on a fundamental right in language wide enough to cover restrictions both within and without limits of constitutionally permissible legislative action affecting such rights it is not possible to uphold it even so far as it may be applied within the constitutional limits as it is not severable. So long as the possibility of its being applied to purpose not sanctioned by the Constitution cannot be ruled out it must be held to be wholly unconstitutional and void; *Ramji Lal v. State of U. P.*, A. I. R. 1957 S. C. 620.

791. Restriction must not be excessive.

A restriction which is in excess of the requirement cannot be sustained. A legislation which arbitrarily invades the rights of citizens cannot be said to contain the quality of reasonableness. Where the restriction imposed outsteps the necessity it cannot be called legal. A restriction should not be disproportionate to the evil sought to be eradicated. A restriction must not under the guise of protecting public interest arbitrarily interfere with the exercise of fundamental rights; *Chintaman Rao v. State of Madhya Pradesh*, 1950 S. C. R. 759; *State of Madras v. Row*, 1952 S. C. R. 597. Where the Deputy Commissioner while exercising power under section 4 of the Central Province Regulation of manufacture of Bidis Act 1954 prohibited the manufacture of bidis during the agricultural season in such villages as may be mentioned in the order it was held that the order passed was not valid as forbidding all person residing in certain areas from manufacturing bidis was violative of Article 19(1)(g). Similarly section 8 of the Drugs and Magic Remedies (Objectional Advertisement) Act 1934 the object of which was to prohibit the advertisement for certain medicines alleged to possess magic qualities and to provide for matters connected therewith it was held that the action of the State Government in detaining or seizing any document, article or thing which such person has reason to believe contains an advertisement contravenes Article 19; *Hamdard Dawkhana v. Union of India*, A. I. R. 1960 S. C. 554.

792. Restriction and prohibition.

There is difference between restriction and a prohibition. A person may be restricted partially or may be restricted totally. A total restriction may amount to prohibition. The legislature is fully competent to decide whether the liberty is going to be curtailed partially or totally, but the legislative decision is not beyond the jurisdiction of the courts and courts can always go into the question of reasonableness of the restriction; *Narendra v. Union of India*, A. I. R. 1960 S. C. 430; *Hari v. Mizo council*, A. I. R. 1967 S. C. 829.

In the case of business or activities which are inherently dangerous as for example production or trading in liquors a total prohibition on the trade or business may be valid. But where there is no such inherent danger it is not justifiable to impose a total prohibition and courts can go into the validity of such a restriction : *Cooverjee v. Excise Commissioner*, 1954 S.C. A. 256; *Narandra v. Union of India*, A. I. R. 1960 S. C. 430. Similarly total prohibition may be imposed on advertisements where such advertisement may result in injuries from self medication : *Hamdard Dvakhana v. Union of India*, A. I. R. 1960 S. C. 554. A Prohibition on possession or buying and selling of wines may be valid : *State of Bombay v. Balsara*, 1951 S. C. R. 682.

793. Total Prohibition.

Where the effect of a restriction imposed is to totally deprive a person from exercising his right as was done in the case of *Yasin v. Town Area Committee*, 1952 S. C. R. 572 it was held that the act of stopping a citizen from exercising his right in selling vegetables amounted to total prohibition but where the prohibition is with regard to the exercise of a right in particular area or with respect to limited matters there is no total prohibition. : *Virindera v. State of Punjab*, A. I. R. 1957 S. C. 898 (See Para 783).

794. Retrospective effect and reasonableness.

So far as criminal law is concerned the Constitution of India guarantees that no retrospective legislation would be enacted. This is contained in the guarantee against ex-post facto laws under Article 20. However the position is different so far as civil rights are concerned because there is no such provision as contained in Articles 20 in Article 19 or in any other Article dealing with Fundamental Rights. The retrospectivity of a statute is an element which may be taken into consideration while going into the question of reasonableness. Simply because a Civil liability is created regarding an act which has already taken place it will not make the statute unreasonable. The question is to be decided on the facts and circumstance of each case.

Where the proprietary rights of citizens were sought to curtailed with retrospective effect the courts came to the conclusion that it is a factor to be taken into consideration in determining the reasonableness of the restrictions imposed by law : *State of West Bengal v. Subodh Gopal*, A. I. R. 1954 S. C. 92; Similarly in the cases of *Sadu Ram v. Custodian General*, 1955 2 S. C. R. 1113 and *Sri Kishan v. State of Rajasthan*, 1955-1 S. C. R. 531 where the restrictions were imposed retrospectively by evacuee property legislation it was held that the legislation is not unconstitutional in view of the exceptional circumstances arising out of the partition of the country.

A retrospective restriction imposed on a contractual right which may result in the total effacement of a subsisting contract may be unreasonable if done retrospectively : *Raghurir v. Union of India*, A. I. R. 1962 S. C. 262.

The Supreme Court has acknowledged the principal that as soon as a right of property accrues under the existing law it becomes a vested right and it cannot be taken away without reasonable justification. A retrospective taxing statute may be unreasonable if it imposes an excessive or arbitrary burden upon the assessee. The length of time however, is not the consideration for determining the reasonableness of a statute.

A statute whose retrospective operation covers a comparatively short period may still be unreasonable : *Rama Krishna v. State of Bihar*, A. I. R. 1963 S. C. 1667.

795. Natural justice and reasonableness.

The requirement of compliance with the principles of natural justice is a determining factor when the question arises as to whether a statute is reasonable or not. The rights of a citizen cannot be cut down without affording him an opportunity to be heard. Thus where the citizen's right of speech or association or any other right contained in article 19 is sought to be curtailed, reasonable opportunity must be afforded : *Virendra v. State of Punjab*, A. I. R. 1957 S. C. 896; *State of Madras v. Row*, A. I. R. 1962 S.C.R. 597; *Ebrahim v. State of Bombay*, A.I.R. 1965 S. C. 229; *Raghubir v. Court of Ward*, 1953 S. C. A. 629; *Dwarka Prasad v. State of U. P.*, A.I.R. 1954 S. C. 224. In some of the cases under normal times the Supreme Court has categorically stated that the deprivation of fundamental rights should be preceded by judicial enquiry. For example when the right of property of a Mahant is curtailed : *Jagan Nath v. State of Orissa*, 1954 S.C.R. 1046.

The provision for appeal or in other words the right of judicial review may change the nature of restriction which may prima facie be unreasonable to reasonable : *Jagan Nath v. State of Orissa*, 1954 S.C.R. 1046.

Where there is no express provision for affording an opportunity for being heard but where in actual practice an opportunity has been given the action cannot be characterised as unreasonable. In the case of *Babul Chandra v. Patna High Court*, A. I. R. 1954 S. C. 524, the vires of Bar Council Act 1926 was challenged as it was said that the procedure laid down does not conform to the requirements of natural justice. The Supreme Court held that the High Court had actually observed the rules of natural justice and even otherwise it is normally expected to observe these principles and therefore, the Act cannot be called as suffering from the vice of procedural unreasonableness as not giving an opportunity to be heard. Similarly in *Chattarbhui v. Union of India*, A. I. R., 1960 S. C. 424 the vires of Central Excise and Salt Act, 1944 came up for consideration. It was held that the provision which prescribed certain penalties for the violation of the statutory provisions even if do not expressly provide for any opportunity to be heard before the order is passed does not violate fundamental rights as the Tribunal is to act judicially, it is to be presumed that it will conform to the requirements of natural justice.

In the case of right conferred by article 19(1) (a) and other rights mentioned in article 19, the Supreme Court had insisted upon judicial supervision, may be by way of appeal or revision. Where no higher authority is mentioned in a statute for supervising or reviewing the decision given by the inferior authority the mere fact that the inferior authority is required to give reasons or to act in accordance with the principles of natural justice it would not be sufficient to save the law from the attack made on the ground of procedural unreasonableness : *Dwarka Prasad v. State of U. P.*, 1954 S. C. R., 803; *Jinadathappa v. Sharma*, A. I. R. 1961 S. C. 1523.

796. Subjective satisfaction of Executive and Reasonableness.

While determining the reasonableness of the restriction, the Courts some times try to analyse the statute to see if the authority, who is empowered to take an action is to act objectively or subjectively. A subjective de-

cision is one which the Executive takes solely on its own satisfaction and where this satisfaction is beyond the reach of the Courts. An objective decision is one which is arrived at by the application of some external standard which can be tested by the Court. The question whether the restriction would be unreasonable simply because the Executive is to take a subjective decision would depend upon the facts of each case, the nature of the right and the circumstances under which the restriction is imposed. An externment law which restricts the freedom of movement cannot be called unreasonable if it is in the security of State and the exercise of restriction is left to the subjective satisfaction of the Executive Officer: *Khare v. State of Delhi*, 1950 S. C. R. 519; *Gopalan v. State of Madras*, 1950 S.C.R. 88.

But a statute would ordinarily be struck down as invalid if the exercise of discretion is made solely dependent on the subjective decision of the Officer entrusted to take action: *State of M. P. v. Baldeo*, A. I. R. 1961 S. C. 293.

A business which is inherently dangerous can be stopped or supervised at the subjective discretion of the Officer concerned: *Cooverjee v. Excise Commissioner*, 1954 S.C.R. 873.

Similarly, where action is required to be taken in emergency, for example where it is necessary to wind up a Banking Company in order to protect the interests of the depositors the action if taken on the subjective satisfaction cannot be challenged as ultra vires: *Joseph v. Reserve Bank of India*, 1962 Supp. 3 S.C.R. 632. A law which authorises the police or the Magistrate on his subjective satisfaction to take necessary action for prohibiting procession or for the maintenance of communal harmony cannot be challenged as violating the rights conferred on the citizen: *Babulal v. State of Maharashtra*, A. I. R. 1961 S.C. 184; *Virendra v. State of Punjab*, A. I. R. 1957 S. C. 896.

Where action is to be taken without any delay as mentioned above, the mere fact that the Executive may abuse its power, is not the determining factor for striking down a statute as ultra vires. The presumption is that an Officer entrusted with a power will exercise that power honestly. The presumption is however, not irrebuttable. If it is shown that the power has been exercised mala fide or in excess of the requirement there is nothing which prevents the Court from interfering in the matter and do justice to the parties: *Khare v. State of Delhi*, 1950 S.C.R. 284; *Tikkaramji v. State of U. P.*, 1956 S.C.R. 393.

But where there is no emergency or where there is no need to use extraordinary power, the rights guaranteed to a citizen cannot be made dependent upon the subjective satisfaction of the Government. For example, the right to form Association or Union has such a wide and varied scope for its exercise and its curtailment is fraught with such potential reactions in the religious, political and economic field that the vesting of authority in the Executive Government to impose restriction on such a right without allowing the grounds of such imposition; both in their factual and legal aspects to be duly tested in a judicial enquiry is a strong element which should be taken into account in judging the reasonableness of restriction imposed on the fundamental rights: *State of Madras v. Row*, 1952 S.C.R. 597.

In a case under the Punjab Special Powers (Press) Act, 1956, where the entry of a newspaper was banned by the State Government without

affording the aggrieved party any opportunity to be heard on the subjective satisfaction of the Government, it was held that the provisions are not in accordance with the Constitution. Where the property of a person is taken away at the subjective discretion of the Government the same also cannot be sustained. When a law deprives a person of possession of property for an indefinite period of time and where the citizens have no right to have recourse to civil Courts such a law cannot be sustained *Raghuvar v Court of Wards*, 1953 S. C. R. 1049, *State of M. P. v. Champalal*, A. I. R. 1965 S. C. 124, *Virendra v. State of Punjab*, A. I. R. 1957 S. C. 899.

A Mahant if he is deprived of his property by framing a scheme which is made final, it will amount to placing unreasonable restrictions upon the right of the Mahant and the law will be void to that extent *Jaganath v. State of Orissa*, 1954 S. C. R. 1046.

A law which leaves the regulation of trade or business in a commodity which is normally available to the subjective satisfaction of the authorities will be void *Dwarka Das v. State of Uttar Pradesh*, A. I. R. 1954 S. C. 224; *Sheshdhar v. District Magistrate*, 1955 S. C. R. 886

797. Unfettered discretion

Where unfettered discretion is vested in an authority the same cannot be called reasonable *Harishankar v. State of Madhya Pradesh*, A. I. R. 1954 S. C. 465.

It is sometimes said that reasonableness of a restriction should be judged from the point of view of the authority which is to exercise that discretion. In *Dwarka Prasad v. State of Uttar Pradesh*, A. I. R. 1954 S. C. 119 it was held that the restriction is unreasonable because the discretion was vested in a Licensing Officer while in the case of *Virendra v. State A I R 1957 S. C. 899* it was held to be otherwise because the authority which was to take action was State Government. Similarly in *Dewan Sugar Mills v. Union of India*, A. I. R. 1959 S. C. 626, where the Central Government was given the power to fix the ex factory price of sugar without affording any judicial review, the validity of the order fixing the price of the sugar was sustained on the ground that the power was to be exercised on the basis of sound principles laid down in the order itself.

798. Possibility of misuse

The mere possibility of abuse of power by the Executive is no ground for declaring a law void on the ground that it suffers from the vice of unreasonableness *Khare v. State of Delhi*, 1950 S. C. R. 519. But if it is proved as a fact that the authority has in fact misused the power the order passed will be declared void but again this cannot be a ground for declaring void the statute itself *Harishankar v. State of Madhya Pradesh*, 1955, 1 S. C. R. 380 *Collector of Customs v. Sampathu*, A. I. R. 1962 S. C. 316.

799. Emergency and Reasonableness

An action which is taken in emergent circumstances will not be hit even if it is taken on the subjective satisfaction of the Government without affording any opportunity to be heard. If restrictions are imposed on business or on publication of material which may lead to communal dis-harmony or where action is taken under section 144 Criminal Procedure Code, these actions cannot be declared as illegal. *Collector of*

Customs v. Sampathu, A. I. R. 1962 S. C. 316 ; *Harishankar v. State of Madhya Pradesh*, 1955 1 S. C. R. 380 ; *Virendra v. State of Punjab*, A. I. R. 1957 S. C. 896. An externment order passed in the security of State will also be covered : *Khare v. State of Delhi*, 1950 S. C. R. 519.

800. Burden of Proof and Reasonableness

Simply because the burden of proof is put upon an accused for stating certain facts which are basically within his knowledge, it cannot be called unreasonable : *Abdul Hakim v. State of Bihar*, A. I. R. 1961 S. C. 448 ; *Collector of Customs v. Sampathu*, A. I. R. 1962 S. C. 316.

801. Restriction and punishment.

An enactment, which provides for a penalty for misconduct cannot be regarded as restriction on a fundamental right : *Ragubir Singh v. Court of Wards*, A.I.R. 1953 S.C. 373. The legislature cannot disobey the constitutional prohibition by employing an indirect method. It is not possible for the legislature to indirectly abridge or take away the fundamental right which it cannot do directly : *Kerala Education Bill*, A. I. R. 1958 S. C. 956.

802. Remoteness of restriction.

Where the object of the restriction imposed is remote to the object sought to be achieved, the same cannot be called a reasonable restriction. There should be a proximate relationship between the restriction and the object sought to be achieved : *Superintendent v. Ram Manohar*, A. I. R. 1960 S. C. 633. An utterance which causes mere annoyance is not covered : *Sodhi v. State of Pepsu*, A.I.R. 1954 S. C. 276. Similarly, criticism of a Minister or using defamatory slogans against a Minister is not covered. Those who fill a public position must not be too thin skinned in a reference to a comment made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust, but they must bear with them and submit to be misunderstood for a time. Who so ever fills the public position renders, himself open their to. He must accept an attack as a necessary though unpleasant, appendage to office. In this case the prosecution launched against the members of the procession was held to be not covered by article 19(2) : *Kartar Singh v. State of Punjab*, 1956 S.C.R. 476.

803. Excessiveness.

Where the restriction imposed is in excess of the requirement, The Courts are reluctant to declare them constitutional. The Punjab Special Powers (Press) Act, 1956, which provided no time limit during which the ban was to remain imposed was held to be void on the ground of excessiveness: *Virendra v. State of Punjab*, A.I.R. 1957 S.C. 896. An excessiveness may also occur where the power conferred is unfettered: *Hamdard Dwarahana v. Union of India*, A. I. R. 1960 S. C. 554. Similarly, in *Superintendent v. Ram Manohar*, A. I. R. 1960 S. C. 633 the Court declared the action of the Government illegal as suffering from excessiveness of restrictions imposed on the right of the citizen. In the case of *Kameshwar v. State of Bihar*, A.I.R. 1962 S.C. 1116, where the Government prohibited government servants from holding any type of demonstration, the rule so authorising was declared null and void.

804. Restriction should be direct.

It is only that restriction which is direct which is to be considered by the Court. An encroachment on the right of the citizen which is incidental

cannot be made a subject matter of judicial review: *Express Newspapers v. Union of India*, A. I. R. 1958 S. C. 578; *Hamdard Drakhana v. Union of India*, A. I. R. 1960 S. C. 554.

REASONABLE RESTRICTION AND FREEDOM OF SPEECH

See Chapter IX on Freedom of Speech

805. General.

The scope of the freedom of speech has already been discussed in Chapter IX of this book. The restrictions which are placed on this right are contained in article 19 (2). The restrictions on this right can be imposed "in the interest of sovereignty and integrity of India, the security of State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence." The scope of the various phrases used in article 19(2) as reproduced above will be discussed in detail in the following paragraphs:

The freedom of press does not mean that it is immune to the general law. No immunity can be claimed by the press and it would be subject to taxation law in the same way as ordinary citizens, but laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its rights to choose the instruments for the exercise of freedom or to seek an alternative media, prevent newspapers from being started and ultimately drive that press to seek Government aid in order to survive would be hit by article 19: *Express Newspaper Limited v. Union of India*, A. I. R. 1958 S. C. 581; 1959 S. C. R. 12.

Advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. An advertisement which is concerned with the propagation of ideas would be covered by the freedom of speech. It cannot be said that the right to publish and distribute commercial advertisement advertising an individual's personal business, is part of freedom of speech guaranteed by the Constitution. Where a certain statute prohibits advertisement commanding the efficacy, value and importance of a particular drug or medicine for the treatment of particular disease, it was held that it cannot be declared void as violating article 19 (1) (a): *Sakal Papers (P) Ltd. and others v. The Union of India*, 1962 3 S.C.R. 671.

The liberty of the press consists in laying no previous restraint on publications. *Brij Bhushan v. State of Delhi*, A. I. R. 1950 S. C. 129; 1950 S. C. J. 425; 1950 S. C. R. 605.

806 In the Interest of.

The words "in the interest of" are words of great amplitude and convey much wider meanings as compared with "for the maintenance of". This expression is again very wide if we compare it with the term "public order." The expression general public is wide enough to include even a section of the public. The question whether a piece of legislation is in public interest or not is justiciable.

The expression "in the interest of" makes the ambit of the protection very wide, for a law may not have been designed to directly maintain the public order or to directly protect the general public against any particular evil and yet it may have been enacted in the interest of the public order or the general public as the case may be: *Virendera v. State*, A.I.R. 1957 S. C. 696; *Ramji Lal v. State*, A.I.R. 1957 S. C. 620.

807.- Sovereignty and integrity of India

By virtue of Constitution 15th Amendment Act, 1963 restrictions can now be imposed on the freedom of speech and expression if the sovereignty and integrity of India is threatened in any way. The object of this amendment was to curb secessionist activities of the various political parties acting in Madras and Kashmir.

808. Security of State

In a democratic country the existence of freedom of speech is as vital as the existence of an organised Government to see that the rights conferred by the Constitution are not taken away or misused by irresponsible elements. To bring about a change in the Government by peaceful and democratic manner is no doubt a right vested in the citizens but to make use of force in toppling or overthrowing an organised Government cannot be covered by any right. If the security of State is in danger, the freedom of speech and expression can be curtailed. The security of State has to be examined from two angles, one is external and the other is internal.

From external point of view if any restriction is imposed to carry on the legitimate programme of the Government e.g. for conducting a war it cannot be said that the restriction imposed is illegal. Where the Government bans the publication of information as to the movement of troops it will be a reasonable restriction imposed in the interest the security of State. No State can tolerate propaganda the object of which is to nullify the legitimate actions of the Government established by law.

In a democracy masses are entitled to know the pros and cons of every political system and the Court will not interfere with this right of any political party, where the legitimate object is to enlighten the masses regarding the political programmes of various political parties; *State of Bihar v. Sailabala*, 1952 S. C. R. 654.

From internal point of view anything which interferes with the public order will amount to interference with security of State. Indeed it is difficult to say that public disorder or disturbance of public tranquillity are not matters which undermine the security of a State; *Romesh Thapar v. State of Madras*, 1950 S. C. R. 594; *Brij Bhushan v. State of Delhi*, 1950 S. C. R. 650.

The word security include both the external and internal security of the State. Where a poet exhorted the labour to raise the cry of revolution and incited them to resort to violence in order to destroy the existing social order it was held that he could be punished in the interest of the security of the State. Under the Bombay Public Security Act of 1947 it was held that the security of the province includes 'public safety', maintenance of public order and the preservation of peace and tranquillity". This interpretation was accepted by the Supreme Court in *Romesh Thappar v. State of Madras*, 1950 S. C. R. 594 and *Brij Bhushan v. State of Delhi*, 1950 S. C. R. 605. The minority view was that security of State should deal with only those matters which are covered by the Indian Penal Code. But the majority speaking through Shastri C. J. refused to accept this view. The Constitution

*See *Near v. Minnesota*, 1931, 283 U. S. 697; *Harisiales v. Shaughnessy*, 1952 342 U. S. 580,

was amended 1951 to include public order as an additional ground of restriction. In *State of Bihar v. Sailbala*, 1952 S. C. R. 654, the Supreme Court observed that even without amendment it was possible to bring the public order within the term 'security of State'. It necessarily follows that even if there are some offences, which are committed against individual only as distinguished from the State, they may affect the security of the State.

809. Friendly relation with foreign States.

The second ground on which restriction can be placed upon the fundamental rights contained in clause (1) (a) article 19, is when there is likelihood of the friendly relations with foreign States being spoiled. This was added by the Constitution First Amendment Act, 1951. It may be seen that Pakistan is not a foreign State for the purposes of this article as members of the Commonwealth are not foreign States according to the Declaration of Foreign States Order, 1950.

810. Public Order

"Public order" and "public safety" are allied matters but in order to appreciate how they stand in relation to each other, it seems best to direct attention to the opposite concepts which may be respectively labelled as "public disorder" and "public unsafety". If "public safety" is equivalent to "security of the State", what can be regarded as "public unsafety" may be regarded as equivalent to "insecurity of the State". If the matter is approached in this way it will be found that while "public order" is wide enough to cover a small riot or an affray and other cases where peace is disturbed by or affects a small group of persons, "public safety" or "insecurity of the State" will usually be connected with serious internal disorder and such disturbances of public tranquillity as jeopardize the security of the State: *Brij Bhushan v. The State*, A. I. R. 1950 S. C. 129, at p. 130.

The words "public safety" and "public order" are interchangeable terms. "Public safety" ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context: *Romesh Thapar v. The State*, A. I. R. 1950 S. C. 124.

Anything which disturbs public tranquillity also causes disturbance of the public peace. Preaching of communal hatred or creating enmity between different sections of the community or doing anything by which communal feelings are aroused, will cause disturbance of public peace: *Virendra v. State of Punjab*, 1957 S. C. 896. Public safety will also include securing of public health by preventing adulteration of food-stuffs etc. Creation of internal disorder or interference with distribution or supply of essential commodities or inducing police or public servants to withhold their services would be included within the meaning of public order: *State of Rajasthan v. Chawla*, 1959 S. C. 544; *Hamdard Dairies v. Union of India*, 1960 S. C. 554. This will also include prevention of public nuisance such as use of loud-speakers. Protection of the country from foreign aggression is included when the question of public safety arises: *Brij Bhushan v. State of Delhi*, 1950 S. C. R. 605. Every act of insult or attempt to insult religious feelings does not disrupt the public order but if this is done with a deliberate intention of

outraging the religious feelings of a class of persons and "there is a calculated tendency to disrupt the public order, the case will be different : *Ramji Lal v. State of U. P.*, 1957 S. C. 620. In *Superintendent v. Ram Manohar*, 1960 S. C. 633 (640), it was held that preaching of non-violent disobedience to the civil laws or non-payment of Government dues cannot be restricted on the ground of public order.

Public order signifies that state of tranquillity or peaceful atmosphere which prevails among the members of a political society as a result of internal regulations and enforced by the Government, which they have instituted. The expression has a wide connotation and it include the words "security of the State" used in clause, though the words "security of State" will not include "public order" : *Romesh Thappar v. State of Madras*, A. L. R. 1950 S. C. 124.

Clause (2) of Article 19 was amended by the Constitution (First Amendment) Act, 1951. By this amendment several new grounds of restrictions upon the freedom of speech have been introduced, such as friendly relations with foreign States, public order and incitement to an offence. It is self evident that freedom of speech is one of the bulwarks of a democratic form of Government. It is equally obvious that freedom of speech can only thrive in an orderly society. Clause (2) of Article 19 therefore, does not affect the operation of any existing law or prevent the State from making any law in so far as such law impose reasonable restrictions on the exercise of the right of freedom of speech in the interest of public order, among others. To sustain the existing law or a new law made by the State under clause (2) of Article 19, two conditions should be complied with, viz. (i) the restrictions imposed must be reasonable ; and (ii) they should be in the interests of public order.

The expression "public order" has a very wide connotation. It implies that orderly state of society or community in which citizens can peacefully pursue their normal activities of life. In the words of an eminent Judge of the Supreme Court of America "the essential rights are subject to the elementary need for order without which the guarantee of those rights would be a mockery". * The expression has not been defined in the Constitution, but it occurs in List II of the Seventh Schedule and is also inserted by the Constitution (First Amendment) Act, 1951 in clause (2) of Article 19. The sense in which it is used in Article 19 can only be appreciated by ascertaining how the Article was construed before it was inserted there in and what was the defect to remedy which the Parliament inserted the same by the said amendment. The impact of clause (2) of Article 19 on Article 19(1) before the said amendment was subject to judicial scrutiny by the Supreme Court in *Romesh Thappar v. State of Madras*, 1950 S. C. R. 594 at pp. 600, 601, 602. There the Government of Madras, in exercise of their powers under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, purported to issue an order whereby they imposed a ban upon the entry and circulation of the journal called the "Cross-Roads" in that State. The petitioner therein contended that the said order contravened his fundamental right to freedom of speech and expression. At the time, when that order was issued the expression "public order" was not in Article 19(2) of the Constitution ; but the

* See *Canterwell v. Connecticut* 1940 (310) U. S. 296.

words "the security of the State," were there. In considering whether the impugned Act was made in the interests of security of the State, Patanjali Sastri, J., as he then was, after citing the observation of Stephen in his Criminal Law of England, stated

Though all these offences thus involve disturbances of public tranquillity and are in theory offences against public order, the difference between them being only a difference of degree yet for the purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories as has been done by the Indian Penal Code. Similarly, the Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights - enumerated in article 19(1), has placed in a distinct category those offences against public order which are at under mining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression."

The learned Judge continued to state

"The Constitution thus requires a line to be drawn in the field of public order or tranquillity marking off may be, roughly, the boundary between those serious and aggravated form of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were differences in kind."

The learned Judge proceeded further to state

"We are therefore of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order."

This decision establishes two propositions, viz, (i) maintenance of public order is equated with maintenance of public tranquillity, and (ii) the offences against public order are divided into two categories, viz (a) major offences affecting the security of the State, and (b) minor offences involving breach of purely local significance. The Supreme Court in *Brij Bhushan v State of Delhi* 1950 S C. R. 605 followed the earlier decision in the context of Section 71(c) of the East Punjab Public Safety Act, 1949. Fazl Ali, J., in his dissenting judgment gave the expression "public order" a wider meaning than that given by the majority view. The learned Judge observed at p 612 thus

"When we approach the matter in this way, we find that while "public disorder" is wide enough to cover a small riot or an affray and other cases where peace is disturbed by, or affects a small group of persons, "public

unsafety" (or insecurity of the State), will usually be connected with serious internal disorders and such disturbances of public tranquillity as jeopardize the security of the State."

This observation also indicates that "public order" is equated with public peace and safety. Presumably in an attempt to get over the effect of these two decisions, the expression "public order" was inserted in Article 19(2) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of purely local significance within the scope of permissible restrictions under clause (2) of Article 19.

In England also Acts like Public Order Act, 1936, Theaters Act, 1843 were passed; the former making it an offence to use threatening abusive or insulting words or behaviour in any public place or at any public meeting with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be caused; and the latter was enacted to authorise the Lord Chamberlain to prohibit any stage play whenever he thought its public performance would militate against good manners, decorum and the preservation of the public peace. The idea underlying all the statutes is that if the freedom of speech was not restricted in the manner the relevant Acts did public safety and tranquillity in the State would be affected.

Public order is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife war affecting the security of the State.

The words "public order" were also understood in America and England as offences against public safety or public peace. The Supreme Court of America observed in *Cantwell v. Connecticut*, (1940) 310 U.S. 296 at p. 308 thus:

"The offence known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts and words likely to produce violence in others. No one would suggest that the principle of freedom of speech sanctions incitement to riot..... When clear and present danger of riot, disorder, interference with traffic upon upon the public streets, or other immediate threat to public safety, peace, or order appears the power of the State to prevent or punish is obvious."

The American decisions sanctioned a variety of restrictions on the freedom of speech in the interests of public order. They cover the entire gamut of restrictions that can be imposed under different heads in Article 19 (2) of our Constitution.

But in India under Article 19(2) this wide concept of "public order" is split up under different heads. It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the security of the State, friendly relations with foreign States public order, decency or morality, or in relation to contempt to court, defamation or incitement to an offence. All the grounds mentioned therein can be brought under the general head "Public order" in its most comprehensive sense. But the juxtaposition of the different grounds indicates that, though sometimes they tend to overlap, they must be ordinarily intended to exclude each other. "Public order" is therefore something which is demarcated from the others. In that limited sense, particularly in view of the history of the amendment, it can be postula-

ted that 'Public order' is synonymous with public peace, safety and tranquillity.

Advocacy of movements which are not violent in nature and which may lead to movements resulting in the disobedience to the civil laws, cannot be restricted as such an action does not fall under the term Public Order. *Ramji Lal v. State of U. P.*, A. I. R. 1957 S. C. 620; *Superintendent v. Ram Manohar*, A. I. R. 1960 S. C. 633. The Indian Penal Code also deals with Public Order and it makes an offence any action which 'ends to promote enmity between different classes of citizens by words, either spoken or written, or by representation or otherwise. Similarly, where the idea is to cause disaffection towards the Government established by law among the members of Police Force, it may be restricted on the ground of Public Order: *Dalbir Singh v. State of Punjab*, A. I. R. 1963 S. C. 1106.

811. Decency or Morality.

Decency and morality is one of the grounds mentioned in clause 2 of article 19 on the basis of which restrictions may be imposed upon the rights of the citizens. A thing can be indecent or immoral which is obscene. The term 'obscene' was defined by the Supreme Court in the case of *Ranjit v. State of Maharashtra*, A. I. R. 1965 S. C. 881; 67 Bombay L. R. 506. It was observed that the delicate task of how to distinguish between that which is artistic and that which is obscene has to be performed by the Courts. The test must be obviously of a general character but at the same time it must admit of just application from case to case by indicating a line of demarcation not necessarily sharp but sufficiently distinct to distinguish between that which is obscene and which is not. Treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without their being something more.

It was observed "it is not necessary that the angels and saints of Micheal Angelo should be made to wear breeches before they can be viewed". The test is whether the tendency of the matter charged as obscene is to deprave and corrupt those minds which are open to such immoral instances and into whose hands a publication of this sort may fall. It is not necessary in order to determine whether a book is obscene or not to compare it with other books. Where obscenity and art are mixed, in such a way that obscenity is so trivial and insignificant and art has a preponderating affect, it can be ignored.

Anything which is calculated to inflame the passions may be called obscene but it is not the intention of the writer but the affect which the writing is going to produce on the minds of the readers which should be the determining factor in judging the writings.

Morality and indecency are similarly vague terms their scope keep on changing from time to time. A thing which is indecent now may not be so for the future generation. Anpi Besant was convicted for publishing literature advocating contraception, but this is not so today. *

812. Contempt of Court

Any act done or writing published the purpose of which is to bring a Court into contempt or in other words where the object is to scandalise the Court, restrictions can be imposed on the right conferred by the article 19 (1)(a). The object is not only to protect the Judges

* *Rex v. Bradlaugh*, 1878 3 Q. B. D. 607.

but also to protect the public at large from the harm which may accrue if the reputation of the Courts is impaired: *Brahm Prakash v. State of U. P.*, 1963 S. C. R. 1169. Where a party to an appeal in the Supreme Court distributed leaflets in the premises of the Court in which it was alleged that the Government acted with partiality in the matter of appointment of the Judges, it was held that no protection can be afforded to the person concerned by article 19(1)(a): *Hiralal v. State of U. P.*, A. I. R. 1954 S. C. 743.

A threat given to a party which may cause the other party to withdraw from the litigation will also amount to contempt. Where a threat was issued in the nature of a circular that disciplinary action would be taken against the Government servant if he took recourse to Courts of Law without exhausting the departmental remedies available, it was held that this amounted to contempt of Court: *Parthap Singh v. Gurbaksh*, A. I. R. 1962 S. C. 1172. Where an order is issued where by an authority is prohibited from doing a certain act and that authority commits a breach of that order, it will be a case of contempt. But the necessary element which should be present is that the order should have been served on the authority concerned. Similarly, it is contempt of Court where the inferior Court disobeys the orders of the superior Courts in an intentional and wilful manner: *Hoshiar Singh v. Gurbachan Singh*, A. I. R. 1962 S. C. 1089; *Roy v. State of Orissa*, A. I. R. 1960 S. C. 190; *Kar v. Chief Justice*, A. I. R. 1961 S. C. 1367.

Similarly, a direction given by an administrative authority to Magistrate that it should ignore the orders passed by a superior Court would amount to contempt of Court: *Rizal-ul-Hassan v. State of Uttar Pradesh*, 1933 S. C. R. 581. A reasonable opportunity, however, must be afforded before a person is punished for the offence of contempt of Court: *Sukhdev Singh Sodhi v. Chief Justice*, 1954 S. C. R. 454.

Where an offence is committed under section 175 to 180 of the India Penal Code, the proper course is not to proceed under the Contempt of Courts Act but to proceed under the Indian Penal Code: *Bathina v. State of Madras*, A. I. R. 1952 S. C. 423.

813. Defamation.

The freedom of speech does not entitle a person to defame another person.

Where members of a procession shouted defamatory slogans against Ministers of Punjab State and proceedings were launched under Punjab Security of the State Act, 1959, it was held that these statements could not be said to undermine the security of the State or friendly relations with foreign States. Public men should ignore such vulgar criticism and abuses hurled against them rather than give importance to the same by prosecuting the person responsible for the same. Those who fill a public position must not be too thin skinned in reference to comment made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time. Whosoever fills the public position renders himself open thereto. He must accept an attack as a necessary though unpleasant, appendage to office. In this case the prosecution launched against the members of the procession was held to be not covered by article 19 (2): *Kartar Singh v. State of Punjab*, 1956 S. C. R. 476.

814. Incitement to an offence.

Incitement to an offence cannot be allowed under the guise of exercising the right of freedom of speech and expression. An act which does not amount to an offence is not covered, for example when a speech is given whereby the public is exhorted not to pay land revenue, it cannot be curbed by taking shelter of this provision: *Ram Manohar v. Superintendent*, A. I. R. 1960 S. C. 633.

815. Sedition.

An unsuccessful attempt may not undermine the security of State. Criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for curtailing the right guaranteed by article 19 (1)(a) unless it is such as to undermine the security of the State; *Romesh Thapar v. State of Madras*, A. I. R. 594. What is covered by the term sedition is acts which are violent or which would normally lead to breach of a peace: *Kedarnath v. State of Bihar*, A. I. R. 1962 S. C. 955.

816. Revolution and War.

Anything which disturbs public tranquillity disturbs public peace. The preaching of communal hatred may also disturb public order. The truth or untruth of the statement is immaterial, it is the effect which is to be seen. Public order also includes public safety: *Romesh Thappar v. State of Madras* 1950 S. C. R. 594. Public safety would include securing of public health by prevention of adulteration of food stuffs but from the point of view of public order, public safety has narrow meaning and in this capacity it will include creating internal disorder or rebellious interference with the supply or distribution of essential commodities or inducing members of the police to withhold their services: *Brij Bhushan v. State of Delhi* 1950 S. C. R. 605. *State of Raj v. Chawala*, A. I. R. 1950 S. C. 544; *Hamdard Drakhawa v. Union of India*, A. I. R. 1960 S. C. 554.

In its external aspect public safety would include protection of the country from foreign aggression: *Brijbhushan v. State of Delhi*, 1950 S. C. R. 654.

FREEDOM OF ASSEMBLY AND REASONABLE RESTRICTION.**817. General.**

Clause 3 of article 19 States the grounds on which restriction can be imposed on the right to assemble peaceably and without arms. These restrictions can be imposed in the interest of sovereignty and integrity of India or public order. For the meanings of the words sovereignty and integrity of India and public order see paras 806 & 810.

The restrictions which are to be imposed on the right conferred by article 19 clause (b) should be such as may stand the test of judicial review both from substantive and procedural point of view.

FREEDOM OF ASSOCIATION AND REASONABLE RESTRICTION.**818. General.**

Restrictions may be imposed on the right conferred by article 19 (1)(c) by clause 3 in the interest of the sovereignty and integrity of India or public order or morality. Thus public order and morality are the main clauses under which restriction can be imposed on the right to form Association and the restriction which has no relationship between the above mentioned two

grounds cannot be sustained. *Gosh v. Joseph*, A. I. R. 1963 S. C. 812. As already indicated public order as used in the clause have the same meaning as public peace safety and tranquillity. The fundamental right to form Associations has a wide and varied scope and any curtailment of this right is fraught with potential reactions in the religious, political and economic fields. It is for this reason the Supreme Court has emphasised that the restriction imposed on this right should stand the test of judicial review. *State of Madras v. Row*, 1961 S. C. R. 527. For relevant case law the commentary under Chapter XI may also be seen.

FREEDOM OF MOVEMENT AND REASONABLE RESTRICTION.

819. General.

The right contained in article 19 (1)(d) can be restricted on the grounds mentioned in clause 5 of article 19. Restrictions can be imposed in the interest of general public or for the protection of the interests of any Scheduled Tribe. A restriction which interferes with the right of a person to move from one place to another if does not satisfy the test of reasonableness will be struck off. But if the Court comes to the conclusion that the restriction imposed is reasonable, then it may uphold the validity of the restriction: *State of U. P. v. Kaushalya*, A. I. R. 1964 S. C. 416.

820. Interest of General Public.

The term interest of the the general public is wide enough to cover public security, public order and morality. It also embraces restrictions which may be imposed on grounds of economic policy for the good of the citizens. The scope of this term is therefore, much wider than the other terms for example clause 2 and 3 of article 19. Public health will also come under the meaning of this expression. The restriction imposed as already indicated should satisfy the tests of substantive and procedural reasonableness.

821. Public Health.

Where the object of a regulation is to prevent the spreading of infectious, or contagious diseases by keeping the persons suffering from these diseases in separate areas, the restriction will be protected because it is in the interest of the public health. It is not only the person suffering from the disease who can only be segregated but a healthy person may also be asked not to go to an area which is disease infested. On this very ground a prostitute may be asked to leave an area where she frequents: *State of U.P. v. Kaushalya*, A.I.R. 1964 S. C. 416. See also *Gopalan v. State of Madras* where observations were made at page 259 and 302 of 1950 S. C. R.

822. Public Security.

Restrictions can be imposed on the right of the citizen conferred by clause (d) of article 19 where public security is involved. Under this, protected places like arsenals or potential war zones may be kept out of the reach of the public: *Gopalan v. State of Madras*, A. I. R. 1950 S. C. 27 : 1950 S. C. R. 88.

823. public Safety.

'Public Safety' and 'Public Order' are allied matters and in order to appreciate how they stand in relation to each other it is desirable to look at the opposite concepts which may be respectively termed as 'public unsafety' and 'public disorder'. Further if 'public safety' is treated as equivalent to 'security of the State', whatever may fall under the term 'public unsafety', may be regarded as covered by the term 'insecurity of the State'. When

approached in this manner 'public order' will mean only a small riot whereas 'public unsafety' will represent serious internal disorder disturbing public tranquillity and jeopardising the security of the the State': *Brij Mohan v. State*, A. I. R. 1950 S. C. 126. The Supreme Court in the case of *Superintendent, Central Prison v. Ram Manohar Lohia*, A. I. R. 1960 S. C. 633 at page 611 observed 'that public order is synonymous with public safety and tranquillity: it the absence of disorder involving breaches of local significance in contradistinction to national upheavals such as revolution, civil strike, war affecting the security of the State'.

824. Public Order.

Public order will also fall under the phrase interest of the general public. If the peace of a certain locality is threatened by the presence of an individual, he can be removed from that area: *Gurbachan v. State of Bombay*, 1952 S. C. R. 737. The movements of habitual offenders or of persons who are a threat to communal harmony can also be put under restriction. *Khare v. State of Delhi*, 1950 S. C. R. 519. Where the provisions of the Bombay Police Act, section 57 were applied to a person so that he may not repeat his criminal propensities, it was held that the law is based on the principles that it is desirable in the larger interests of society that the freedom of movement and residence of a comparatively fewer number of people should be restrained so that the majority may move and live in peace and harmony and carry on their peaceful avocations untrammelled by any fear or threat of violence to their person or property: *Hari Khemu v. Deputy Commissioner*, 1956 S. C. R. 506.

825. Public morals.

Where restrictions are imposed on the movement of prostitutes and their movements are restricted or they are required to move to certain locality, the same will be protected by this term: *State of U. P. v. Kaushalya*, A. I. R. 1964 S. C. 416.

826. Protection of the interests of the Scheduled Tribes.

The Constitution of India gives several protections to the Scheduled Tribes and Backward classes of the society because till India was granted freedom these persons were almost socially neglected. Where restrictions were imposed on the rights of the non-tribals to carry on business in tribal areas, it was held that the restriction imposed being in the interest of Scheduled Tribes will be protected by clause 4 of article 19: *Hari Chand Sarda v. Mizo District Council*, A. I. R. 1967 S. C. 829.

827. Externment.

The provisions of an Act the object of which is to 'extern a dangerous character from a locality would be unreasonable if it fails to define what a dangerous character is. If the administrative authority is vested with a discretion which is unguided, the same will be declared unconstitutional. But where the extent, the duration and other purposes are mentioned in the Act the provisions cannot be called unreasonable. The question of go together: *Gurbachan v. State of Bombay*, 1952 S. C. R. 737; *Khare v. State of Delhi*, 1950 S. C. R. 519. Where a person is externed from the whole of the State, it cannot be said that the law is bad provided that the presence of that person in the State is dangerous to such an extent as may call for taking this extreme step. It will depend upon the evil which is

sought to be remedied. In these circumstances it is not necessary to mention the area or the place where the person externed is to move because when a person is turned out of a State the State turning out has no jurisdiction beyond the area which is under it - *Gurbachan v. State of Bombay*, 1957 S. C. R. 737; *State of U. P. v. Kaushalya*, A. I. R. 1964 S. C. R. 416.

828 Duration of externment.

A law which provides for externment for an indefinite period would *prima facie* look to be unreasonable. But this factor alone is not the deciding factor in determining the question whether the Act is reasonable or not. If the provisions are of a temporary nature or where the externment order is subject to judicial review, the same will be protected. Where the procedure described for externment is judicial or quasi judicial even if the externment is for an indefinite period, the same will be constitutional : *State of U. P. v. Kaushalya*, A.I.R. 1964 S.C. 416. In *Khare v. State of Delhi*, 1950 S.C.R. 519 where the duration of the period of externment was 3 months it was considered to be reasonable.

829. Removal from India.

The requirement of obtaining a permit or a passport for entry into India cannot be called unreasonable. But where a citizen of India is not allowed to enter India at all the same cannot be sustained : *Abdul Rahim v. State of Bombay*, 1960 (1) S. C. R. 285.

830 Grounds if to be communicated

Grounds must be communicated to the person who is externed and the grounds should not be vague. The grounds will be vague, insufficient and incomplete if the person who is served with an externment order is not told enough and he is not in a position to make any representation. Merely saying that a person is indulging in subversive act will not be enough, because he will not be able to make any representation unless particulars are also supplied.

FREEDOM OF RESIDENCE AND REASONABLE RESTRICTION

831 Re-entry from foreign countries

The requirement of producing a permit before a person can re-enter India is reasonable *Ibrahim v. State of Bombay*, 1954 S.C.R. 933, *Abdul Rahim v. State of Bombay*, A.I.R. 1959 S. C. 1315. But provision which provides for the forfeiture of Indian citizenship if there is conviction for an offence for the breach of passport regulations cannot be sustained in view of article 19(1)(a). *Abdul Rahim v. State of Bombay*, A.I.R. 1959 S. C. 1315

FREEDOM OF PROPERTY AND REASONABLE RESTRICTION

832 General.

Clause 5 of article 19 authorises the State to impose reasonable restrictions on the right of property in the interest of the general public and for the protection of the interest of any Scheduled Tribe. The expression interest of the general public will include public order, public safety, common good and all other actions which may be taken in the interest of the general public : *Bijoy Cotton Mills v. State of Orissa* A.I.R. 1961 S. C. 1433. See paras 821 to 826.

833. What is a restriction on the freedom of property.

The right to property which includes right to acquire, hold or dispose of property is not an absolute right but is liable to be curtailed by restrictions placed in the interest of the general public. The requirement of giving accounts imposed upon a religious head, the right of pre-emption, the right to search the premises are some of the instances; See *M. P. Sharma v. Shalish Chandra* 1954 S. C. R. 1077; *Anant Prasad v. State of Andhra Pradesh*, A.I.R. 1963 S. C. 853; *Sudhindra v. Commissioner*, A.I.R. 1963 S. C. 966; *Ram Sarup v. Munshi*, A. I. R. 1963 S. C. 553. Similarly laws dealing with rent restriction where the object of the law is to protect tenants from eviction or where agrarian reforms are sought to be brought about, if any restriction is imposed the same cannot be termed unreasonable: *Shri Krishan v. State of Rajasthan*, 1955 (2) S. C. R. 531.

834. In the interest of.

Restrictions may be imposed on the right to enjoy property in the interest of general public. Where land is given to the landless or where maximum area which a person can hold is fixed it will be a reasonable restriction: *Sonapur Tea Co. v. Deputy Commissioner*, A. I. R. 1962 S.C. 137. Where the management of a property is taken away so that essential commodities may not fall in short supply or where the object is to prevent unemployment, it cannot be said that the power used is in excess of the requirement: *Chirnjit Lal v. Union of India*, 1957 S. C. R. 839. In the case of *State of Rajasthan v. Nath Mal*, 1954 S.C.R. 982 an order freezing the stock of foodgrains in order to ensure equitable distribution was upheld. The requirements that the religious head should give account and in the event of mismanagement the termination of the Mahantship may result cannot be called bad. Mismanagement of trust property is something which is to be condemned: *Anant Prasad v. State of Andhra Pradesh*, A.I.R. 1963 S.C. 853; *Sudhindra v. Commissioner*, H.R.E. A.I.R. 1963 S.C. 966. The refusal of import or export licence unless application is made through proper channel will also be protected in the interest of general public: *Glass Chatons Association v. Union of India*, A.I.R. 1961 S.C. 1314. But mere transfer of property from one individual to another unless the idea is to accommodate a person who is shelterless will not be protected. *Kochuni v. State of Madras*, A.I.R. 1960 S. C. 1080; *Jinadathappa v. Sharma*, A. I. R. 1961 S.C. 1583.

835. In the interest of scheduled Tribes.

As already indicated in para 826, restrictions can be imposed on the rights of the citizens if the restriction imposed advance the cause of Scheduled Tribes: See *Hari Chand v. Mizo District Council*, A. I. R. 1967 S. C. 829.

836. Prohibition

Imposing a control or restricting on the use of liquor will be a reasonable restriction: *State of Bombay v. Balsara*, 1951 S.C.R. 682. But if a restriction is imposed on the use of an item of toilet and medicinal preparation which contains some alcohol also will be unreasonable. The State may in the exercise of its police powers restrict the selling of intoxicating liquor, the State may also suppress what it is free to regard as a public evil, but such measures should have a reasonable nexus with the object in view.

837. Pre-emption.

The right of pre-emption which operates as a restriction on the right

to hold property cannot be called unreasonable. Where the object is to maintain integrity of the village and the village community and to implement the agnatic rule of succession, it cannot be called unreasonable. The Supreme Court observed the fact that the person next in succession should have chance of obtaining the property alone is sufficient to render the restriction reasonable : *Ram Sarup v. Munshi*, 1963 S. C. D. 728; 65 Pun. L. R. 531.

But the right of pre-emption based on vicinage was declared to be illegal by the Supreme Court in the case of *Sant Ram v. Labh Singh*, 1964 (7) S. C. R. 756 ; A.I.R. 1964 S.C. 315. But where this law extends to urban property it cannot be sustained : *Babu Ram v. Brij Nath*, A. I. R. 1962 S.C. 1476. See paras 729 and 734.

838. National economy.

A provision the object of which is to preserve the national economy as for example checking smuggling of gold cannot be called reasonable. Similarly, prohibition imposed on trade by way of Export or Import control order cannot be called violative of the Fundamental Rights conferred by article 19 : *Collector v. Sompashi* C. A. I. R. 1962 S. C. 316. Similarly, where for earning foreign exchange the citizens of India are forced to make good the loss which the producer of sugar suffer during export cannot be called unreasonable.

839. Rent Control

Where the owners of residential houses are prevented from increasing the rents of the houses it cannot be called unreasonable as the object is that there should be fair and equitable fixation of rents : *Srikrishna v. State of Rajasthan*, (1955) 2 S. C. R. 531.

840. Agrarian Reforms

Where the object of the law is to bring about agrarian reforms, as for example giving land to the landless or to the non-proprietors, it cannot be attacked as violative of the rights conferred by Article 19 : *Ranjit Singh v. State of Punjab*, (1955)-2 S. C. A. 385 ; A. I. R. 1965 S. C. 632.

But if the object of the law is to take away the property of one person and give it to another, it cannot be called reasonable as no agrarian reform is brought about and no public purpose is served by such an action : *Kochuni v. State of Madras*, A. I. R. 1960 S. C. 1080. Similarly where a tenant is given protection by law against eviction, in the interest of increasing the production of food-grains, it cannot be termed as illegal : *Inder Singh v. State of Rajasthan* 1957 S. C. R. 605 : A. I. R. 1957 S.C. 510. A law permitting a tenant to purchase the property on the termination of the tenancy on the payment of price fixed by a statute cannot be called unreasonable : *Vajrapani v. N. T. C. Talkies*, A. I. R. 1964 S. C. 1440.

841. Debt Recovery Laws

A law meant for the recovery of debts if prescribes special procedure, it cannot be termed as unreasonable. The Patiala State Recovery of Dues Act, which laid down special procedure for the recovery of debts payable to Government was held to be legal. Under this Act the amount found due was to be realised through the Nazim as arrears of land Revenue and through the Accountant General by authorising him to withhold amounts due to the defaulter from any department of the State. The jurisdiction of the Civil Courts was barred regarding any action so taken.

848. Religious property.

The provisions of Durgah Khawaja Sahib Act, 1955 came for consideration before the Court in the case of *Durgah Committee v. Husein Ali*, 1961 2 S. C. A. 171; A. I. R. 1961 S. C. 1402. The relevant Section which was attacked as violating article 19 (1) (f) was Section 2 (d) (v) and Section 14 which provided that offerings which are made earmarked generally for the Durgah, they belong to the Durgah and such offerings can be received only by the Nazim or his agent and no body else. These offerings never belonged to the Khadims. The Khadim's right to receive offerings is an entirely different thing from the offerings which are made at the Durgah. The right of the Khadims to receive offerings, which is a judicially recognised right, is not affected in any way by the provisions mentioned above. Even after the coming into force of the Act the pilgrims could make offerings to the Khadim and there was no provision which interfered with the offerings so made. It was held in this case that such a provision does not in any way violate article 19(1) (f).

A provision contained in the Hindu Religious endowment under the Hyderabad Endowment Regulation 1940 for the registration of endowed property and for carrying out the object of the endowment i. e. to carry out the intention of the endower cannot be called violative of article 19(1) (f). These regulations are clearly reasonable and are made in the interest of general public within the meaning of article 19 (1) (f). A provision in the Act which impose a penalty for neglecting to carry out the provision of the endowment cannot be called violative of article 19 (1) (f). The purpose of these regulations is that endowments existing in the State and their management should be carried on for the benefits of the humanity according to the terms of the endowment : *Anant Parsad v. State of Andhra Pradesh*, A. I. R. 1963 S. C. 853.

The provision of Bihar Hindu Religious Trust Act as contained in Section 60(6) of the Act which conferred power to alter or modify the budget relating to a religious trust or to give directions to a trustee cannot be said to affect the due observance of religious practices in a Math or temple so as to constitute an encroachment of the fundamental rights contained in article 25 or article 19(1) (f). If the object of the Act is to provide for better administration, protection and preservation of trust properties, it cannot be termed as unreasonable : *Moti Das v. S. P. Saki*, A. I. R. 1959 S. C. 942; 1959 S. C. J. 114.

A Math is a religious institution presided over or managed by hereditary trustee. The provisions of Orissa Hindu Religious Endowment Act, 1962 as amended in 1954 was held to be constitutional as giving enough opportunity for redressing any wrong done : *Sadasib Parkash v. State of Orissa*, A. I. R. 1956 S. C. 432 : 1956 S. C. R. 45.

But where restriction were placed on the right of a Mahant to enjoy property in such a way that he was reduced to the status of a State servant, it was held that the restrictions are unreasonable : *Commissioner H. R. E. v. Sri L. T. Swamiam*, A. I. R. 1954 S. C. 287 : (1954) S. C. R. 1005 ; 1954 S. C. A. 415; 1954 S.C.J. 335.

Reasonable restriction can be placed upon the right of the Mahant to deal with the property of the religious institution in the interest of general public. Where there is a provision for the removal of the Mahant or of taking control of the institution where the property of the Math is being utilised for personal enjoyment or luxury, it cannot be said that

there is any violation of article 19 (1) (f) *S T Swamier v Commissioner H R & C E* 1963 2-S C A 340 A I R 1963 S C 973

The right of a Mahant over the property of the Math is undoubtedly property. A Mahant is not a mere manager or custodian nor is he a trustee in the strict sense. The holding of the office of Mahant by customs and usage of the institution confers a large number of rights which are proprietary in nature over the property of the math on the Mahant but at the same time by virtue of his office there are obligations imposed upon him. The Mahant of the Math is generally a *Sanyasin* who has renounced the worldly affairs and who has no family ties either by blood or by marriage and in a theoretical sense he has taken a vow of not owning any property. He in his capacity as a Mahant has to incur expenditure for the Math; i.e. for carrying on the religious worship, but he cannot use the money for his personal luxury or in objects incongruous with his position as a Mahant. Power to waste the property or the income of the institution is not the right of the Mahant.

849, Taxing laws

See para 861

FREEDOM ON OF TRADE AND REASONABLE RESTRICTIONS

850 General

Like other rights the right to carry on any occupation trade or business is not an absolute right. It is liable to be curtailed in the interest of General Public and the State is further competent to lay down professional or technical qualifications necessary for practising any profession or carrying on any occupation trade or business. The State is further competent to carry on business to the exclusion of all citizens. A law cannot be declared unconstitutional if the requirements of Article 19 (6) are fulfilled. *Ram Chand v Union of India* A I R 1983 S C 563 *Ram Jawaya v State of Punjab* 1955 (2) S C R. 255

851 Interest of the General Public, some instances

The restrictions which might be imposed with the idea of eliminating middlemen and bringing producer and the purchaser face to face cannot be called unreasonable. *Arnuachala v State of Madras*, A I R. 1959 S C 300 *Tika Ramji v State of U P* 1956 S C R 393. Restriction imposed with the idea of putting an end to tourism are also valid. In re *Sarvam* (1960) 3 S C R. 499. Similarly where a lawyer who is engaged by a municipality is not allowed to contest the election to that municipality no grievance can be made of that fact. *Sakhawant v State of Orissa* A I R 1955 S C. 166. Similarly the requirement of licence cannot be called illegal. *Madhu Bhas v Union of India* A I R 1961 S C 21. Restriction may also be imposed under clause 6 of Article 19 on the right of the transporters to ply buses on the highways. *Shagor Ahmed v State of U P* 1955 S C R 707. Similarly freezing of foodgrains in the interest of fair and equitable distribution would fall under the term in the interest of general public.

A law the object of which is the social uplift of workers will be protected by Article 19 (6). Thus prescribing of Maximum Wages or fixing the closing and opening hours of business establishments will be protected. Under this clause the State may forbid the employment of women and children in certain establishments. *Manohar v State* 1951 I. S. C R. 671

Minimum Wages Act which provided for the giving of minimum wages to the labourers was held to be reasonable and protected and cannot be challenged as the restrictions imposed are in the interest of general public under article 19(8) : *Vijay Cotton Mills Ltd. v. State of Ajmer*, A. I. R. 1953 S. C. 3 ; 1956 (1) S. C. R. 752.

Where restrictions were imposed on import and export policy, it was held that there is no monopoly created : *Bhutnagar & Co. v. Union of India*, A. I. R. 1957 S. C. 478.

Gambling prize competition are not regarded as trade or commerce. It was held that these trades are not entitled to any protection under article 19(1)(g) : *State of Bombay v. R. M. D.*, A. I. R. 1957 S. C. 699. Where restrictions on Matwali were imposed so that he was to submit a budget of wakt it was held that the restriction imposed was reasonable : *Bisurudi Ashroj v. State of Bihar*, A. I. R. 1951 S. C. 645.

852. Competition.

Where the provisions of U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 provided that the owner of the factory shall purchase the sugarcane from the Co-operative Society which was assigned to the factory, it was held that the restriction so imposed is in the interest of the general public, the object being to eliminate the unhealthy competition between the cane growers and the various factory owners : *Tikka Ramji v. State of U. P.*, A.I.R. 1956 S. C. 676.

853. Regulation of Essential Commodities.

Regulation of essential commodities which are necessary for the welfare of the community cannot be regarded as unreasonable. Similarly, fixation of prices of essential commodities is a restriction imposed in the interest of the general public so that the purchasers may not be subject to unreasonable inconvenience : *Hari Shankar v. State of M. P.*, 1953 1 S.C.R. 330; *Narendra v. Union of India*, 1960 S.C.J. 214. But a provision which entitles the Government to freeze the stock and to sell it at any rate it likes was held to be unreasonable on the ground of excessiveness of the restriction : *State of Rajasthan v. Nathmal*, 1951 S.C.R. 982.

854. Social welfare Legislation.

Where the object of a law is to protect the interest of the workman and where it provides compensation for the period of closure of an establishment, it cannot be termed as unreasonable : *Bijoy Cotton Mills v. State of Ajmer*, 1955 (1) S.C.R. 752. A law providing for a temporary order requiring employers to observe conditions of employment and to refer industrial disputes for conciliation cannot be called unreasonable : *State of U. P. v. Basti Sugar Mills*, A.I.R. 1961 S.C. 420. Fixation of minimum wages even if it constitutes a restriction upon the freedom of the employer to fix wages on contractual basis cannot be called unreasonable : *Express Newspaper v. Union of India*, A.I.R. 1953 S. C. 578. A provision requiring contribution towards provident fund being in the interest of the workers would be upheld : *Orissa Cement Ltd. v. Union of India*, A.I.R. 1962 S.C. 1402.

855. Intoxicants

Prohibition of possession, consumption or dealing in any way with intoxicants by a law is a reasonable restriction upon the rights conferred by article 19 (1) (g) : *State of Bombay v. Balsara*, 1951 S. C. R. 632. But

the prohibition of medicines which may contain some alcohol cannot be banned under this heading.

856. Labour Laws.

The Prevention of exploitation of labour is essential in a country which is committed to social welfare of the citizens, and even though in the fixation of minimum wages the capacity of the employer is not considered it cannot be termed as unreasonable : *Unchoyi v. State of Kerala*, A.I.R. 1962 S. C. 12 ; *Manohar Lal v. State of Punjab*, A.I.R. 1961 S.C. 418.

857. Import Export Regulation:

The vices of non-ferrous Metal Control Order made under section 3 of the Essential Commodities Act, 1955 came up for consideration before the Supreme Court in *Narindra Kumar's Case* 1960 (2) S.C.R. 375, it was held that the restrictions imposed are reasonable as the copper produced in India is needed for a large variety of industries and if the idea is to save foreign exchange the restrictions imposed are reasonable. Where the persons desirous of entering into such trade are given reasonable opportunities before their applications are disposed off it cannot be called as unreasonable : *Ram Chand v. Union of India*, A. I. R. 1963 S.C.R. 563. Similarly, if import or export is regulated in order to check smuggling no complaint can be made : *Collector of Customs v. Sampathu*, A.I.R. 1962 S.C. 316.

858. Monopoly.

The Constitution as it stood before the Constitution First Amendment Act, 1951 was not in favour of creating any monopoly rights and where the traders were excluded totally or partially from a trade or business such exclusion could be challenged and reasonableness of such a statute could be tested in a Court of Law : *Shagir Ahmed v. State of U. P.* ; 1955 (1) S.C.R. 707. But now after the amendment the position is different and monopoly rights can be created in favour of the State : *Akadasi v. State of Orissa*, A.I.R. 1963 S. C. 1047. The citizens cannot complain where the State competes with ordinary citizens on the ground that the resources of the State are much more than those of the ordinary citizen : *Prabhanji v. Regional Transport Authority*, A.I.R. 1960 S. C. 801. The State is not to give any compensation if the stock in trade of private traders becomes useless during the creation of monopoly rights. It is now possible for the State to create monopoly and nationalise any industry without giving any compensation : *Shagir Ahmed v. State of Uttar Pradesh*, 1955 S.C.R. 707.

859. Permit.

The regulation of trade and business by issuing permits is a reasonable restriction and cannot be called unconstitutional. The validity of Motor Vehicles Act, 1939 under which it was necessary to take out a permit before carrying on the business of plying motor vehicles, was held to be constitutional. The consideration that the administrative authorities have got unfettered discretion in granting the permits was held to be a irrelevant consideration : *Vierappa v. Raman*, 1952 S. C. R. 583.

It is now almost a recognised principle that a trade or business which is inherently dangerous to the community, the State is competent to impose the requirement of taking out permits : *Cooverji v. Excise Commissioner*, 1964 S. C. R. 870. Similarly, where an essential commodity is not available the requirement of taking a permit is not unreasonable : *Hari Shanker v. State of U. P.*, 1955 (1) S.C.R. 380.

The Supreme Court has, however, laid down that a commodity which

is normally available should not be subjected to the requirement of taking out permits: *Dwarka Prasad v. State of U. P.*, 1954 S.C.R. 803. Where the measures are of a temporary nature the Courts are generally inclined to hold the law to be reasonable: *Narendra v. Union of India*, 1960 (2) S.C.R. 277.

860. Licences.

The State can regulate the rights of the citizens conferred on them under article 19 (1)(g) by laying down reasonable conditions. One of the conditions is the requirement of taking out a licence before doing any business. The power of granting or withholding licences or fixing the prices of goods would necessarily have to be vested in certain public offices or bodies and they would certainly have to be left with some amount of discretion in these matters. So far no exception can be taken; but the mischief arises when the power conferred on such officers is an arbitrary power unregulated by any rule or principle and it is left entirely to the discretion of a particular officer to do anything he likes without any check or control by any higher authority. A law or order, which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot but be held to be unreasonable: *Dwarka Prasad v. State of Uttar Pradesh*, 1954 S.C.R. 802.

Where the right conferred by article 19 (1) (g) is sought to be curtailed by issuing licences, the discretion vested in the authorities must be controlled by clear rules so that they may come within the category of reasonable restrictions: *Panna Lal v. Union of India*, 1958 S. C. R. 233.

Where the authority competent to issue the licences refuses to do so on account of the executive instructions it cannot be called legal: *Manna Lal v. State of Assam*, A. I. R. 1962 S. C. 386.

A power to refuse or cancel a licence without affording the person concerned an opportunity for being heard for taking the proposed action would be hit by article 19 (1) (g): *Fedco. v. Bijngrami*, A. I. R. 1960 S. C. 415; *Shivaji v. Union of India*, A. I. R. 1960 S. C. 608.

Where an authority who is to issue the licence is required to act in a quasi judicial manner and is also to state the reason for giving or not giving the licence and where the order of refusal can be made subject of an administrative appeal it cannot be termed as suffering from the vice of unreasonableness: *Chatturbhai v. Union of India*, A. I. R. 1960 S. C. 424. Mere obligation to give reasons is not enough unless a right of appeal or review is provided: *Dwarka Prasad v. State of U. P.*, A. I. R. 1954 S. C. 224.

But there are exceptions to this rule. In a case where the action is required to be taken in emergency or the articles for which the licence is to be taken are inherently dangerous non observance of procedural reasonableness may not be enough to declare the law invalid: *Coverji v. Excise Commissioner* 1954 S. C. R. 873: *Krishan Chand v. Commissioner of Police*, A. I. R. 1961 S. C. 705. In the latter case the requirement of taking out licence for running a hotel was held to be reasonable. In that case it was observed that the compulsion of bearing before passing the order would imply that party should be heard before the order is passed and the fact that no hearing is required to be given by the Commissioner before he decides to grant or refuse a licence would not make the provisions as to licences in the circumstances of the

case unreasonable restriction on the fundamental rights of carrying a trade.

However, the law which makes it obligatory to take out a licence must lay down the standards according to which the licensing power is to be exercised. *Ganpati v. State of Ajmer*, A I R. 1955 S. C. 188; *Dwarkanath Prasad v. State of U. P.*, A. I. R. 1964 S. C. 224. Further opportunity should be given normally before an order is passed. *Fedco v. Bilgrami*, A I. R. 1960 S. C. 415.

Delegation of uncontrolled discretion upon the administrative authority may constitute an unreasonable restriction: *Pannalal v. Union of India*, 1957 S. C. R. 233. There should be no power to delegate the power to issue licences: *Cooverys v. Excise Commissioner*, 1954 S. C. R. 873; 1954 S. C. A. 254. Where the law confers upon the licencing authority to give exemptions, the grounds on which the exemptions are to be granted should also be mentioned clearly.

The question whether the licence fee operates as a restriction on the rights of the citizens to carry on trade, business or profession can be challenged in a Court of law. *Yasin v. Town Area Committee*, 1952 S. C. R. 572. But where the object of imposing licence fee is also to raise revenue it is outside the purview of article 19 (6): *Atiabari Tea Company v. State of Assam*, A. I. R. 1961 S. C. 232.

861. Taxation.

The question whether imposition of a tax upon a trade imposes a restriction on the fundamental rights of the citizens becomes material when the tax is imposed without any legal authority. *State of Kerala v. Joseph*, A. I. R. 1958 S. C. 298; *Himmat Lal v. State of M. P.*, 1954 S. C. R. 1122. The taxing power of the State can be questioned on the ground of reasonableness. But the ground of a attack is very limited. The attack can be on the limited ground, when the affect of the taxing statute is to directly and indirectly restrict the trade. *Kunnthal v. State of Kerala*, A. I. R. 1961 S. C. 522, *Balaji v. Income tax officer*, A. I. R. 1962 S. C. 123.

862. State Trading.

Before the amendment of clause (6) in 1951, the taking part by a State in the trade which may impair the business of the private traders could be justified only if the reasonableness of the law was upheld by the Court. *Shagor Ahmed v. State of Uttar Pradesh*, 1955 S. C. R. 707. But after the amendment the reasonableness of the statute is not an essential ingredient of a statute which authorises the State to compete with ordinary citizens. *Narayanappa v. State of Mysore*, A I R 1960 S. C. 1073, *Akadas v. State of Orissa*, A. I. R. 1963 S. C. 1047. The State is now competent to enter into any trade or business not only for reason of administrative policy but also for the better control of prices or for raising the quality of products. The State can enter into business just like ordinary citizens and make profit. *Prabhani Transport Society v. Regional Transport Authority*, A. I. R. 1960 S. C. 801; *K. Rao v. Andhra Pradesh State Road Transport Corporation*, A. I. R. 1961 S. C. 82. There is no restriction on the power of the State to create a monopoly in its favour. *Shagor Ahmad v. State of Uttar Pradesh*, 1955 S. C. R. 707.

It is not necessary that the State should carry on the trade through the public servants. It can do so through private individuals and if a private agent carries on business on behalf of State it cannot be attacked on the ground that it falls outside the protection afforded by clause (6) of article 19 of the Constitution: *Akads v. State of Orissa*, A. I. R. 1963 S. C. 1047.

The State is competent to enter into trade or business without any legislation on the point. Where the State wants to exploit the mineral resources, it is not necessary that it should enact a legislation to that effect. But where monopoly rights are sought to be created in favour of State specific legislation would be necessary: *Narayanappa v. State of Mysore*, 1960 (3) S. C. R. 742.

863. Nationalisation.

Nationalisation of any trade can be brought about by the State because now ample power is conferred by the amendment made in the Constitution in 1951 in this behalf. Before the amendment the view of the Supreme Court as expressed in *Shagor Ahmad v. State of Uttar Pradesh*, 1955 1 S. C. R. 707, was that the existing traders, if excluded by a law from carrying on business, the validity of such a law could be challenged and if found unreasonable and against the interests of the general public it could be declared ultra-vires.

Clause (6) the object of which is to bring about a socialistic pattern of society, empowers the State to nationalise any business: *Akads v. State of Orissa*, A. I. R. 1963 S. C. 1047.

864. Clause (6) If Restrospective.

The amendment of clause (6) which was brought about by the Constitution First Amendment Act, which came into force on 18th of June, 1951, is not retrospective and will not affect the rights or the laws passed before that day: *Ramjaya v. State of Punjab*, 1955 2 S. C. R. 225.

CHAPTER XVII

PROTECTION AGAINST DOUBLE JEOPARDY

SYNOPSIS

- 865. General
- 866. Act done before the Constitution are covered
- 867. Laws in force
- 868. Offence
- 869. Prosecuted and punished
- 870. Same offence
- 871. More than once
- 872. Ex post facto laws
- 873. Double Jeopardy
- 874. By authority of law
- 875. Fixing Minimum sentence of fine
- 876. Trial failing for want of sanction, second trial not barred
- 877. Punishment under Sea Customs Act, proceedings under Foreign Exchange Regulation can be taken.
- 878. Unauthorised use of Canal is not an offence
- 879. Forfeiture is not a penalty
- 880. Trial under an ex post facto law
- 881. Offence under Prevention of Corruption Act—Property acquired before the Constitution can be taken into consideration
- 882. Punishment by jail authorities does not bar trial under Indian Penal Code
- 883. Distinct offences
- 884. Confiscation of goods, effect
- 885. Immunity under clause 3 of article 20 when available
- 886. Protection when available
- 887. Compelling to be a witness
- 888. Accused if can be a witness on his own behalf
- 889. Production of documents
- 890. Corporations, if person

891. Retracted confession

892. Section 27, Evidence Act, if constitutional

865. General

Article 20 of the Constitution of India deals with *ex post facto* laws though that expression is not used in the Constitution. Every *ex post facto* law must necessarily be retrospective law but every retrospective law is not an *ex post facto* law. Where an *ex post facto* law modifies the rigour of a criminal law, it does not fall within the prohibition of Article 20 : *Rattan Lal v. State of Punjab* 1964 (7) S. C. R. 676.

866. Acts done before the Constitution are covered

The prohibition under Article 20 is not confined to the passing or validity of the law but extends also to the conviction of an offence : *Shiv Bahadur Singh v. State of Madhya Pradesh*, A. I. R. 1953 S. C. 394.

867. Laws in force

The expression 'Laws in force' means the law actually in operation and not those laws which may be deemed to be in force : *Shiv Bahadur Singh v. State of V. P.*, A. I. R. 1953 S. C. 394. The term must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law deemed to be in operation.

868. Offence

The word offence has not been defined in the Constitution. Therefore the meaning which this term obtains in General Clauses Act would be applicable to Constitution as well.

869. Prosecuted and Punished

This term implies that the proceedings should have been before a Court of law or judicial tribunal : *Venkatraman v. Union of India*, 1954 S. C. R. 1150 ; *Maqbool Hussain v. State of Bombay*, 1953 S. C. R. 730.

The proceedings will be judicial when there is a question of fact and the fact is to be ascertained by leading evidence. Further it will be a question of law, if the tribunal is to decide that question after considering case law if, any there; on the point : *Bharat Bank v. Employees*, 1950 S. C. R. 459.

Prosecution would mean the starting of proceedings of a criminal nature in accordance with the procedure laid down in the relevant statute which creates the offence. Thus proceedings before the custom authorities under the Sea Customs Act, 1878 would amount to prosecution : *Thomas Dana v. State of Punjab*, A. I. R. 1959 S. C. 375.

Punishment in the context of Article 20 would mean a judicial penalty. Penalty imposed under Public Servants (Inquiries) Act, 1850 would not fall under the term punishment for the purposes of Article 20 : *Maqbool Hussain v. State of Bombay*, 1953 S. C. R. 730. Similarly a punishment imposed for the violation of Influx from Pakistan Control Act will not amount to punishment : *Ebrahim Warir v. State of Bombay*, A. I. R. 1954 S. C. 229.

870. Same Offence

The offence is not same when offence are distinct and separate. Dacoity is one offence and the possession of fire arms is another. Similarly an offence under the Sea Customs Act is different from an offence of conspiracy under section 120 B of the Indian Penal Code.

Leo Roy v. Superintendent District Jail, A. I. R. 1958 S. C. 119. An offence under section 5 (2) of the Prevention of Corruption Act 1947 is different from that falling under section 409 of the Indian Penal Code: *State of Madhya Pradesh v. Veereshwar*.

871. More than once

Appeal is continuation of the original proceedings and is not a fresh proceedings: *Kalawanti v. State of Madhya Pradesh*, A. I. R. 153 S. C. 131.

872. Ex Post Facto Laws.

Clause 1 of article 20 says that no person can be convicted of any offence except for violation of a law enforced at the time of the commission of the act charged as an offence. Nor can he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. This clause does not mean that it permits a law which makes an offence something which was not an offence when it was done but only prohibits the conviction of such thing as an offence: Except as provided by this article, the Union Parliament and the State Assembly have power of legislation on the respective subjects within their jurisdiction and make law which are retrospective in their effect. While interpreting certain enactment the Courts should not put an interpretation which would bring the enactment within the prohibition of article 20 (1). Such an interpretation as far as possible should be avoided. *Kanaiyalal v. I. T. Poldar*, A. I. R. 1958 S. C. 444. The main purpose of the article is to prohibit the conviction or sentence under *Ex post facto* laws: *Shiv Bhadur Singh v. State of U. P.*, A. I. R. 1953 S. C. 394. The wording of this article intended to cover only criminal proceedings: *Magbool Hussain v. State of Bombay*, A. I. R. 1953 S. C. 325. This article has no applicability where the law merely authorises the restriction of fundamental rights with retrospective effect but does not create an offence nor imposes a punishment. *State of Bihar v. Shailabala Devi*, A. I. R. 1952 S. C. 329. What is meant by the term law in force is a law which is factually in operation at the time of the commission of the Act: *Shiv Bhadur v. State of U. P.*, A. I. R. 1953 S. C. 394. This article prohibits all convictions or subjecting a person to penalties after the Constitution in respect of an *Ex post facto* law whether such law was pre-constitutional or post Constitution law. Where the Act constituting an offence is of a continuous nature, then it can be punished under a law passed during the continuation of the Act although at the commencement of the Act it was not punishable and was not an offence.

873 Double Jeopardy, for same offence:

Clause 2 of article 20 deals with the wellknown principle of criminal jurisprudence that no person shall be prosecuted and punished for the same offence more than once: *Magbool Hussain v. State A. I. R. 1953 S. C. 325*. Thus a man cannot be put in jeopardy twice for the same offence. Under section 403 of the Criminal Procedure Code a person who has once been tried cannot be tried again for the same offence if he is once acquitted, but under this clause the prohibition is against a person being subject to punishment twice for the same offence. Hence if at the previous trial a person is acquitted then it will be no bar to try him again for the same offence: *Kalawanti v. Himachal Pradesh* A. I. R. 1952 S. C. 121. Where a previous prosecution has ended in the discharge of the accused owing to the want of sanction for the prosecution required by law, there is no bar for a fresh trial for the same offence. *Baij Nath v. State of Bhopal*, A. I. R. 1957 S. C. 494. Where the prosecution was faulty due to want of sanction and the conviction and sentence in that prosecution is set aside by the appeal

court, a fresh prosecution will not be barred under this clause as no punishment has been inflicted on the accused: *Baij Nath v. State of Bhopal*, A. I. R. 1957 S. C. 494.

The words prosecuted and punished are to be read together. They are not to be read distributively so as to mean prosecuted or punished. Both the factors must co-exist in order to attract clause 2 of article 20. Thus where confiscation is made under section 167 of the Customs Act and afterwards criminal prosecution is launched, there is no violation of article 20 clause 2 because the confiscation under the Customs Act cannot amount to prosecution: *Kalwanti v. State of Himachal Pradesh* A. I. R. 1933 S. C. *Venkataraman v. Union of India* A. I. R. 1954 S. C. 375. A law which provides for punishment in default of fine cannot be regarded as imposing double punishment. Summary eviction of a person under the Rent Control law does not amount to punishment for an offence. Where restrictive precautions are imposed on a person, it cannot amount to prosecution or punishment for the purposes of clause 2 of article 20. Where removal is ordered under the Influx from Pakistan Control Act of 1949 it cannot be said that there is double jeopardy merely because removal is in addition to punishment under section 5 of the Act: *Ebrahim Wasir v. State of Bombay*, A. I. R. 1954 S. C. 229. The proceedings must be distinct ones. If a subsequent proceeding is a part of the previous proceeding, for example an appeal, the provisions of article 20 clause 1 have no applicability. The proceedings of both the cases must constitute prosecution and the two proceedings must be distinct ones: *Kalwanti v. State of Himachal Pradesh*, A. I. R. 1933 S. C. 131. In order to invoke the protection guaranteed by clause 2 it is necessary that the prosecution and punishment are in a judicial manner. The very wording of article 20 indicates that the proceedings contemplated are of criminal nature before a Court of law or judicial tribunal; *Venkataraman v. Union of India* A. I. R. 1954 S. C. 375). Sea customs Authorities cannot be called judicial tribunal and where it confiscates or imposes increased rate of duty, it is not acting as a Court or as a Judicial Tribunal which is a necessary element which must be present before the principal of double jeopardy is taken shelter of. Detention under the Preventive Detention Act does not amount to prosecution and punishment. Similarly security proceedings under chapter 8 of the Criminal Procedure Code do not constitute prosecution. Similarly departmental enquiry against public servant can in no way be called criminal trial. Where disciplinary action is taken against a detainee under the Preventive Detention Act 1950 by the Jails Superintendent, and where such disciplinary action is taken under the rules, it is no bar to prosecution and punishment for an offence committed by the detainee: *Magbool Hussain State of Bombay*, A. I. R. 1953 S. C. 325.

874. 'By Authority of Law'

The term 'by authority of law' is different from the term law in force. The authority may be conferred retrospectively but it is not the same thing as laws in force: *West Ramanad Electric Distribution Co. v. State of Madras*, 1963 (2) S. C. R. 747.

875. Fixing Minimum sentence of fine.

The fine which could have been imposed upon an accused under section 420 of Indian Penal Code is unlimited. A law which prescribes the minimum of the fine which could be fixed cannot be called viola-

tive of Article 20 of the Constitution of India. Such a law cannot be construed as to mean as one which imposed a greater penalty than might be inflicted under the law in force : *Satwant Singh v. State of Punjab* A. I. R. 1960 S. C. 266.

876. Trial failing for want of sanction, second trial not barred.

Where there was a trial of offence u/s 601 of the I. P. C. and section 5 of the Prevention of Corruption Act and where earlier proceedings fail for want of sanction, it was held that the second trial is not hit by article 20 or section 403 C.P.C. : *Baij Nath v. State of Bhopal*, A.I.R. 1957 S.C. 499.

877. Punishment under Sea Customs Act-Proceedings under Foreign Exchange Regulation can be taken.

Where there are proceedings before Sea Customs Authorities under section 167 of the Sea Customs Act, 1878, these proceedings would not bar subsequent action under Foreign Exchange Regulations Act of 1947 or Indian Penal Code. A person under such a circumstance cannot say that there is double jeopardy for the same offence : *Thomas Dena v. State of Punjab*, A. I. R. 1959 S.C. 372.

878. Unauthorised use of canal is not an offence.

The unauthorised use of canal water is not an offence, and where under rules 32 and 33 of Pepsu Sirhind Canal Rules, enhanced charges were levied it was held to be not a penalty. *Jawala Ram v. State of Pepsu* A. I. R. 1962 S. C. 1246; 1962 (2) S.C.R. 503.

879- Forefeiture is not penalty.

Where there was forefeiture provided in section 13 (3), of the Cr. L. Amendment Ordinance, it was held that the forefeiture is not penalty within meaning of article 20 (1) and cannot be equated with forefeiture of property provided in section 53 of the Indian Penal Code : *State of West Bengal v. S. K. Ghosh* A. I. R. 1963 S. C. 257.

880. Trial under an ex-post-facto Law.

Article 20 of the Constitution of India prohibits only conviction of a person to a penalty higher than that which obtained at the time when the offence was committed. But this does not mean that the procedure which is to be applied should also be the same as that obtained at the time of the commission of the offence : *Rao Shiv Bhadur Singh v. State of Vindhya Pradesh*, 1953 S. C. R. 1183.

881. Offence under Prevention of Corruption Act, 1947, property acquired before the Constitution can be taken into consideration.

Section 5 of the Prevention of Corruption Act, 1947, does not create a new offence. It merely prescribes a rule of evidence for the purpose of proving the offence of criminal misconduct as defined in section 5(1) for which an accused person is already under trial. A conviction of a person under the presumption raised in section 5(3) in respect of property acquired before the Prevention of Corruption Act came into force cannot be called as violative of article 20 (t) of the Constitution : *Sajjan Singh v. State of Punjab*, A. I. R. 1964 S. C. 464; *Swami v. State*, A. I. R. 1960 S. C. 7.

882. Punishment by jail authorities does not bar trial under the Indian Penal Code.

A detainee made an assault on an official of the jail, the result of which was that he was removed to a cell where the detainee resorted

to hunger strike. The jail authorities stopped the interviews and after some time the jail authorities filed a complaint against the detainee under the relevant rules for having committed jail offence in resorting to a hunger strike and for offences under section 332 and under section 353 of the Indian Penal Code, it was held that the mere fact the jail officials had taken action under the relevant rules by way of stopping interviews will not mean that the trial for the offences committed under the Indian Penal Code was unconstitutional. *Maqbool Hussain v. State of Bombay*, 1953 S.C.R. 731.

883. Distinct offences.

Disciplinary proceedings will not fall under the term prosecution. The wordings of article 20 of the Constitution of India show that the proceedings therein contemplated are proceedings of the nature of Criminal Proceedings before a Court of law or a Tribunal acting in a judicial manner. Disciplinary proceedings which are taken against government servants by administrative authorities do not bar the helping of fresh enquiries by an authority competent to do so : *Davindra Pratap v. State of Uttar Pradesh*, 1962 Supp. 1 S.C.R. 315. Similarly, an enquiry made under Public Servant's Enquiry Act, 1850, will not fall under the term prosecution. Any punishment imposed under Public Servant's Enquiry Act, 1850, will not be sufficient for barring another enquiry as contemplated by article 20 (2) of the Constitution : *Vankataraman v. Union of India*, 1954 S.C.R. 1150

The crucial requirement before article 20 (2) of the Constitution of India is attracted is that the two offences should be identical. The ingredients of the two offences should, therefore, be analysed. An offence which falls under section 509 of the Indian Penal Code is distinct from the offence which is covered by section 135 of the Insurance Act. Similarly, where a person is tried under sections 392 and 332 of the Indian Penal Code and is acquitted, the holding of separate trial under the Essential Supplies Temporary Powers Act cannot be termed as violative of article 20 (2); *Kunji Lal v. State of Madhya Pradesh*, 1955 (1) S. C. R. 872. The second trial which is prohibited by article 20 (2) should be with regard to the same offence : *Manipur Administration v. T. B. Singh*, A.I.R. 1965 S.C. 87. Where a person was convicted with regard to a conspiracy to commit criminal breach of trust with respect of one company and subsequently it was found that there was one more conspiracy with regard to lifting of funds of some other company as well, it was held that the two offences cannot be called as falling under the term same offence : *Bhagwan Sarup v. State of Maharashtra*, A.I.R. 1962 S.C. 682.

Confiscation of goods by sea custom authorities under the Sea Customs Act does not bar proceedings under Foreign Exchange Regulation Act : *Maqbool Hussain v. State of Bombay*, 1953 S.C.R. 730 ; *Thomas Dana v. State of Punjab*, 1960 S.C.R. Supp. 1 S.C.R. 275, 276.

884. Confiscation of goods.

Confiscation of goods by sea custom authorities under section 167 of the Sea Customs Act does not bar the authorities from proceeding under section 23 of the Foreign Exchange Regulation Act. The proceedings before the sea customs authorities cannot be called prosecution. The word prosecution for the purposes of article 20 would mean the starting of proceedings in a criminal case and in this respect an order of confiscation cannot be called prosecution : *Maqbool Hussain v. State of Bombay*, 1953 S.C.R. 730.

∴ 885. Immunity under clause 3 of article 20 when available.

Clause 3 of article 20 gives affect to the well known old, established principle of Criminal law that no person accused of any offence shall be compelled to be a witness against himself. What is prohibited by clause 3 of article 20 is testimonial compulsion. The protection afforded to an accused person in so far as it covers the phrase "to be a witness" is not merely in respect of testimonial compulsion in the court room but it may extend to compelled testimony previously obtained from him : *Sharina v. Shatish* A.I.R. 1954 S.C. 300.

Where confession is made without any threat or inducement it cannot be said that a person is being forced to be a witness against himself. It has been held in a Supreme Court case that where confession has been obtained under coercion, it may not technically amount to compelling him to be a witness in his own case though the use of coercion may be abnoxious to all fundamental principles of criminal jurisprudence : *Kalzanil v. State of H.P.*, A.I.R. 1953 S.C. 131. The prohibition contained in clause 3 is applicable to all cases including those which originated before the constitution and pending at the time of the coming into force of the constitution : *Shiv Bhakadur v. State of Uttar Pradesh*, A. I. R. 1953 S. C. 394.

The proceedings in which constitutional immunity may be invoked must be a proceeding before a Court of law where a person is accused of an act which is punishable under Penal Law or any other local or special law. The proceedings under section 240 of the Companies Act, 1956 are not covered by article 20(3) : *Narayan Lal v. Maneck*, A.I.R. 1961 S.C. 29. Similarly, proceedings under the Insurance Act are not covered by the protection of article 20 (3) : *Dalmia v. Delhi Administration*, A.I.R. 1962 S.C. 1821. Similarly, proceedings under Banking Companies Act, 1949, cannot enjoy the protection afforded by article 20(3) : *Joseph v. Narayanan* A.I.R. 1964 S.C. 1552. Simply because any disclosure made in these proceedings may lead to the starting of some criminal prosecution at some future date will not be enough : *Narayan Lal v. Maneck* A. I. R. 1962 S.C. 29.

886. Protection when available.

The protection of article 20(3) is available when the question with regard to the nature of the proceedings is determined. The protection is available to person against whom a formal accusation has been made and secondly the accusation is with regard to an offence which is punishable under the Penal Code or any special or local law. The proceedings in which the constitutional immunity may thus be invoked must be a proceeding in a court of law or a judicial Tribunal where a person is accused or charged with having committed an act which is punishable as stated above, *Narayan Lal v. Maneck*, A.I.R. 1961 S.C. 29. In the case of *Sharma v. Satish*, 1954 S.C.R. 1077 the Court observed :

".....Nor is there any reason to think that the protection in respect of the evidence so produced is confined to what transpires at the trial in the Court room. The phrase used in article 20(3) is "to be a witness" and not to "appear as a witness." It follows that the protection afforded to an accused in so far as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him."

In this case the Court held that the protection was available to a person compelled to produce incriminating documents under Foreign Exchange regulation as soon as the first information report is lodged in which the person is recorded as accused.

Article 20(3) cannot be applied to a proceeding where a general investigation is held, even though as a result of the general investigation specific accusation may subsequently result. This article will apply only when a person is an accused person.

In the light of this it may be stated that any statement which a person may be required to make under Foreign Exchange Regulation Act, 1947 or any public examination of the promoters of a Banking Company under section 45(g) of the Banking Companies Act cannot be protected by the immunity afforded by article 20(3).

887. Compelled to be a witness.
Compulsion is an essential ingredient of clause (3) of article 20 of the Constitution. But a positive volitional act which furnishes evidence is testimony and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person. Where a person is not bound to answer the question there is no compulsion: *Dasgiri v. State of Madras*, A. I. R. 1960 S. C. 756. Where an accused under pain of penalty is asked to produce certain documents, immunity is available; *Sharma v. Satish*, 1954 S. C. R. 1077.

888. Accused if can be a witness on his own behalf.

In India with the amendment of Criminal Procedure Code by Act 26 of 1955, section 342 (a) has been added which enables the accused to be a witness on his own behalf. Unless the version given by the accused can be proved false beyond reasonable doubt it should be accepted. *Hate Singh v. State of M. P.*, A. I. R. 1953 M. P. 247. An accused can be convicted on the basis of his own statement if his evidence supports the version given by the prosecution: *Vijendra v. State of U. P.* A. I. R. 1963 S. C. 247.

889. Production of documents.

The evidence which falls under article 20(2) of the Constitution is both oral and documentary. If a person is compelled to produce documents which may go against him it may contravene article 20(3) *Sharma v. Satish*, 1954 S. C. R. 1077.

890. Corporation, if person.

The term person has not been defined in the Indian Constitution but there is no doubt that a corporation is a person for the purposes of article 20(3). *Sharma v. Satish*, 1954 S. C. R. 1070.*

891. Retracted Confession.

Article 20(3) does not apply to retracted confession. *Puran v. State of Punjab*, A. I. R. 1953 S. C. 459. *Kala Vanti v. State of Himachal Pradesh*, 1953 S. C. R. 540. It may be seen however, that a retracted confession is not sufficient to lead to conviction unless there is some other corroboration. *Mutku Swami v. State of Madras*, A. I. R. 1954 S. C. 4.

*See *Triplex Glass Company v. Langgay Glass Limited* 1939 2 All E. R. 612.

892 Section 27. Evidence Act if constitutional.

If the self incriminatory information has been given by an accused person without any threat, that will be admissible in evidence and that will not be hit by the provisions of cl. (3) of Article 20 of the Constitution for the reason that there has been a compulsion. It must, therefore, be held that the provisions of S 27 of the Evidence Act are not within the prohibition aforesaid unless compulsion had been used in obtaining the information. *State of Bombay v. Kathi*, A. I. R. 1961 S. C. 1808

A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. *Sharma v. Satish Chander*, 1954 S. C. R. 1077. Thus there is no protection under the Indian Constitution against search and seizure and the matter has been left to the discretion of the legislature. The Court observed in *Sharma's case*,

"When the Constitution makers have thought fit not to subject such regulation to Constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no jurisdiction to import it, into a different fundamental right by some process of strained Constitution. Nor is it legitimate to assume that Constitutional protection under Article 20 (3) would be defeated by statutory provision of searches"

CHAPTER XVIII

PERSONAL LIBERTY

SYNOPSIS

- 893 Meaning of personal liberty Article 19
- 894 There is no deprivation of personal liberty if a man is under detention under some law
- 895 Right to live
- 896 Deprivation of personal liberty
- 897 Articles 21 and 22
- 898 Procedure established by law
- 899 Executive Instructions are not covered by the definition of law
- 900 Article 22 Arrest distinguished from protective custody
- 901 Right to be defended by a pleader
- 902 Magistrate means magistrate acting as court
- 903 Detention by private individual is not covered
- 904 Right to appear in examination is not covered
- 905 Production within 24 hours is mandatory
- 906 Imprisonment or detention under some law is not a restriction under Article 19
- 907 Arts 20 to 22 guarantee entire protection of personal liberty, regarding substantive and procedural law
- 908 Protection provided by Article 20 to 22 is that life and personal liberty cannot be affected except under valid law
- 909 Seven heads of fundamental rights
- 910 Articles 20 to 22 put restrictions on State control in case of deprivation of life and liberty
- 911 Articles 20 to 22 contain the entire protection of life and liberty
- 912 Reasonableness of law can be determined by Courts under Article 19 but not of law relating to deprivation of life and liberty
- 913 Articles relating to right to freedom must be considered together
- 914 Article 19 does not protect detention under some law

915. Article 19, how to be read. Legislation must be directly in respect of the fundamental rights

916. Some instances

893. Liberty Meaning of, Article 19.

Liberty Consists in doing what one desires but the liberty of the individual must be limited and an individual must not make himself a nuisance to others. Man as a rational being desires to do many things but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals. Liberty has, therefore, to be limited in order to be effectively possessed. Accordingly, Article 19 while guaranteeing some of the most valued phases or elements of liberty to every citizen as civil rights, provides for their regulation for the common good by the State imposing certain restrictions on their exercise. The power of locomotion is no doubt an essential element of personal liberty which means freedom from bodily restraint, and detention in jail is a drastic invasion of that liberty. Article 19 does not refer to freedom of movement *simpliciter* but guarantees the right to move freely "throughout the territory of India." Article 19(1) similarly guarantees the right to reside and settle in any part of territory of India, and cl. (5) authorises the imposition of "reasonable restrictions" on these rights in the interests of the general public or for the protection of the interests of any Scheduled Tribe. Reading these provisions together, it is reasonably clear that they were designed primarily to emphasise the factual unity of the territory of India and to secure the right of a free citizen to move from one place in India to another and to reside and settle in any part of India unhampered by any barrier which narrowminded provincialism may seek to interpose. The use of the word "restrictions" in the various sub clauses seems to imply in the context, that the rights guaranteed by the Article are still capable of being exercised.

Read as a whole and viewed in its setting among the group of provisions (Articles 19-22) relating to Right to Freedom, Article 19 seems to pre-suppose that the citizen to whom the possession of these fundamental rights is secured retains the substratum of personal freedom on which alone the enjoyment of these rights necessarily rests *Gopalan's case*.

894. There is no deprivation of personal liberty if a man is under detention under some law.

The right to acquire hold and dispose of property cannot be exercised as regards movable properties and even as regards immovables if a person is under detention because he cannot acquire or dispose of them from behind the prison bars nor could he hold them in the sense of exercising rights of possession and control over them which is what the word seems to mean in the context. But where, as a penalty for committing a crime or otherwise the citizen is lawfully deprived of his freedom there could no longer be any question of his exercising or enforcing the rights referred to in cl. (1). Deprivation of personal liberty in such a situation is not within the purview of article 19 at all but is dealt with by the succeeding Articles 20 and 21 : *Gopalan v. State of Madras*, 1950 S. C. 27.

895. Right to live

The right to live is the most fundamental of all rights. But in the very nature of things this right is most difficult to define and its protection only is contained in the form of a declaration that no person

shall be deprived of it except by due process of law or by authority of law : *Gopalan v. State*, A. I. R. 1950 S. C. 27.

896. Depriving of Personal Liberty

The word deprivation indicates the loss of personal liberty which is a total loss. And it is to be viewed as contrasted with a mere restriction on personal liberty : *Gopalan v. State*, A. I. R. 1950 S. C. 27. This is applicable not only to the initial deprivation of the personal liberty of a citizen, but the continuation of the deprivation of personal liberty must also be according to the procedure established by law. Articles 19 and 21 deal with different subjects. Where the question is of total deprivation then it falls exclusively within the scope of Article 21 and Article 19 deals only with certain important individual rights of personal liberty and the restriction that can be placed upon the right : *Gopalan v. State*, A. I. R. 1950 S. C. 27. Article 19 protects the freedom of the citizen though at the same time it empower the State to impose restrictions where necessary. Article 27 time on the other hand enables the State to deprive individual of his life and personal liberty in so far as it is in accordance with procedure established by law subject to the provisions of Articles 19 and 22. A. I. R. 1952 S. C. 252.

The validity of the law where article 21 alone applies cannot be tested in the light of the provisions of the Article 19 : *Collector of Malabar v. Hajes* A. I. R. 1957 S. C. 688. Article 19 deals with the rights of the citizens only when he is free, but when a person has ceased to be free: whether under Preventive or Punitive, Legislation Article 19 cease to have any applicability : *Gopalan v. State*, A. I. R. 1950 S. C. 27. Where a person has been detained under the Preventive Detention Act 1950 and this detention has been ordered for the purpose of preventing him from making speeches, it was held that Article 19 has no applicability. It is Article 21 which governs the matter; A. I. R. 1951 S. C. 270. There may be some conflicts and illogicalities, real or supposed, there may be some anomaly but such anomaly is inherent in the structure and language of the relevant articles whose meaning and effect has now been settled by law Courts and the Courts should not try to discover these supposed anomalies while interpreting law : *Ram Singh and others v. The State of Delhi and another*, A. I. R. 1951 S. C. 270.

The words personal liberty as they stand in their relation to Article 21 do not mean only liberty of the person but mean liberty or the rights attached to the person. Thus the words 'personal liberty' are capable of including the rights mentioned in Article 19, for the Constitution has been drafted in such a way as to treat the two rights as distinct. Not only this, it provides for them separately in two different articles. Article 19 does not apply to a law authorising the deprivation of personal liberty though the rights granted under Article 19 may be lost during the progress of such deprivation. Personal liberty is identical with freedom of movement, sometime also called freedom of locomotion. There is distinction between the expression freedom as used in Article 19 and the words personal liberty as used in Article 21 : *A. K. Gopalan v. State of Madras*, A. I. R. 1950 S. C. 27. In ordinary language personal liberty means liberty relating to or concerning the person or body of the individual and the personal liberty in this sense is the antithesis of physical restraint. It is this negative right of not being subjected to any form of physical restraint that

constitutes the essence of personal liberty and not mere freedom to move to any part of Indian territory. The constituent Assembly deliberately used the words personal liberty and not liberty alone which is capable of having a wider meaning. This right to the safety of one's life and limbs and to enjoyment of personal liberty in the sense of freedom of physical restraint of any sort is the inherent birth rights of a man. The essence of these rights consist in restraining others from interfering with them and they cannot be described in terms of freedom to do a particular thing. *A. K. Gopalan v. State of Madras* A. I. R. 1950 S. C. 27.

897. Articles 21 and 22

Article 22(1)(2) is a sort of limitation on the right guaranteed by Article 21. If the procedure mentioned in those articles is followed the arrest and detention contemplated by article 22 (1) and (2) although they infringe the personal liberty of the individual will be legal. There is a significant difference in the wording of article 19, 20, 21 and 22. Under articles 21 and 22 the restriction is not on the freedom but restriction is on the power of the State to take away the liberty : *A. K. Gopalan v. State of Madras*, A. I. R. 1950 S. C. 27.

898. Procedure Established by law.

The expression procedure established by law denotes an enacted law, and not law in the abstract of the principle of natural justice. The expression is to be given the fluid meaning of the expression due process of law under the American constitution. It is not to be given a wider or extended meaning; *Collector of Malabar v. Erimmal Ebrahim Hajee*, A. I. R. 1957 S. C. 688; 77

The expression law as used in article 21 does not denote law in the abstract sense, or what is known as *Jus*. It means enacted law or what is commonly termed as *lex*. The mere fact that the word law occurs in the expression due process of law as used in the American Constitution, and procedure established by law as used in Indian Constitution it does not mean that the meaning of the word law as given by the American Courts must be imported into while interpreting the Indian Constitution and specially article 21. The procedure under article 21 must be one established by general law of procedure and it must not be a mere ad hoc change made for a special purpose on special occasion; *Gopalan v. State*, A. I. R. 1950 S. C. 27. The expression refers to the procedure prescribed by any law which is duly made. This expression is not confined to the procedure contained in any particular statute such as civil or criminal procedure code. It is open to the Union Parliament or other State Legislatures to alter the prescribed procedure and such amended procedure will also be procedure established by law so far as article 21 is concerned *S. Krishan & others v. the State of Madras*, A. I. R. 1951 S. C. 301. The word 'procedure' as used in article 21 do not make this article a merely procedural provision. Process of procedure in this connection refers to both the act and the manner of proceedings to take away the personal liberty or life of a citizen. Procedure means manner and form of enforcing the law. It must be taken to signify some step or method or manner of proceedings which may lead upto the deprivation of life or personal liberty.

The article confers only protection against executive authority and not against legislature. *A.K. Gopalan v. State of Madras* A. I. R. 1950 S. C. 27. It may be said that the executive cannot take away life and liberty of a

person upon its own responsibility, unless it has the support of some legal provision for doing so and as it is acting within the four corner of the law. There is no doubt that the power of the legislature to control the rights is conferred by article 21 but at the same time it must also be kept in view that the position in point of law in England is not different inspite of the supremacy of the Parliament, which has not been known to legislate against well recognised canons of natural justice accepted as such in all civilised nations. The State must act within the four corners of the law in any proceedings affecting the life or liberty of a person. This article has added nothing new to the existing procedure. It has only guaranteed a principle which is well known to the jurisprudence and which was well established in this country. *Narajan Singh v. State of Punjab* A. I. R. 1952 S. C. 106. The Court must see that the law under which the action is being taken is a valid piece of legislation. The law must have been passed by legislature which is competent to do so and at the same time it must not violate fundamental rights of the constitution. Thus where a law violate article 14 that is the right to equality then such a law must be declared as bad. *Collector of Malabar v. Erimmal Ebrahim Hajee* A. I. R. 1957 S. C. 688. *Vishwa Nath v. State of Uttar Pradesh* ; A. I. R. 1960 S. C. 67. *Gopalan v. State of Madras* ; A. I. R. 1950 S. C. 27. *K. Kishi Raning Rawat v. State of Saurashtra*, A. I. R. 1952 S. C. 123. Where a law does not expressly limit a fundamental right, the Courts cannot import the nation's spirit of constitution while interpreting such a law. A punitive statute should never be vague. A person must be in a position to know as to what he is to do and what he has not to do. The Court must also see to the procedure required by law and unless the procedure is followed a person cannot be deprived of his life or personal liberty *A. K. Gopalan v. State of Madras* A. I. R. 1950 S. C. 27. Where a law enables the executive to deprive a person of his personal liberty at its own sweet will such a law is bad. It is not necessary to mention every detailed step of the procedure and the discretion of deciding as to what should be the procedure left to the legislature. The legislature can modify a law in any manner and at any time it thinks fit. An Act which empowers the State to try offence by a special Court, cannot be called unjust or invalid. *Kishi Raning Rawat v. State of Saurashtra* A. I. R. 1952 S. C. 123. It is the duty of the Court to see that requirements are fulfilled. *Makhan Singh v. State of Punjab* A. I. R. 1952 S. C. 27. Where the deprivation of personal liberty is not according to law, or according to the procedure established by law, the Courts must order the release of the detained person. *Maqbool Hussain v. State of Bombay* A. I. R. 1953 S. C. 325. Where the Government has been given the power to arrest a man under an Act if it is satisfied that the activities of such a person are subversive, it is not necessary for the executive to prove the existence of reasonable grounds for its satisfaction, when the matter goes before the Court, but the Court can examine the malifides or bonafides of the order made by the Government. *Ashutosh Lahry v. The State of Delhi* A. I. R. 1953 S. C. 451. But where a statute says that a certain officer can arrest a person if there is a reasonable suspicion, he must prove before the Court that his suspicion was reasonable. Where a person is detained under a law and there is no trial and where the law says that the detenu must be supplied with the grounds of detention, the grounds should not be vague. Where a reason is given for the detention of a person and that reason falls outside the scope of the act under which the detention is ordered, the order detaining that person is vitiated.

"Procedure established by law" means procedure prescribed by the law made by the Parliament or the State Legislature. We cannot construe this expression in the light of phrase "Due Process of Law" as used in the American Constitution. Under Article 21, law does not include principles of natural justice. *A. K. Gopalan v. State of Madras*, 1950 S. C. R. '83. The procedure prescribed by law can be changed by amending the law. *S. Krishna etc. v. State of Madras*, 1951 S. C. R. 639. Liberty of a person cannot be taken away without having recourse to procedure established by law. *Makhan Singh Tarsikka v. State of Punjab*, 1952 S. C. R. 368. The meanings of the word "life" and "person liberty" were explained in *Kharak Singh v. State of U. P. etc.*, 1964 1 S. C. R. 242; A. I. R. 1963 S. C. 1295. Personal liberty can be taken away if arrears of tax are not paid. Thus section 48 of Madras Revenue Recovery Act 1964 was held to be valid. Similarly, Section 46 (2) of the Indian Income Tax Act does not violate any provision of the Constitution. *Purshotam Govindji Halai v. B. M. Desai*, (1955) 1 S. C. R. 897; *Collector of Malabar v. Erimmal Ebrahim Hajji*, 1957 970.

899. Executive Instructions are not covered by the definition of law.

Liberty of a person cannot be taken away by having recourse to departmental instructions. U. P. Police Regulation 236 (a) was considered in *Kharak Singh v. State of U. P. etc.*, (1964) 1 S. C. R. 232; A. I. R. 1963 S. C. 1295. It was held that the provision of the said regulation so far as it enabled domiciliary visits was hit by Article 21 of the Constitution, because there was no law warranting such a course. However, Article 21 does not prohibit secret picketing of the dwelling of suspected persons. According to the minority view, even this was hit by Article 21.

900. Article 22, arrest distinguished from protective custody.

Every case of physical restraint does not fall within the term 'arrest' as used in clauses 1 and 2 of article 22. It has only a limited significance. A. I. R. 1953 S. C. 13; I. L. R. 1953 Punjab 121. There are two tests to be applied before it may be said that the person is arrested. Firstly, the arrest must be by the executive. Where the arrest is under the order of the Court or under a warrant issued by the Court it will not fall within the term arrest as used in Article 22. Secondly it must be on an accusation of some offence or some activities on the part of the arrested person which is considered as prejudicial. *The State of Punjab v. Ajais Singh*, A. I. R. 1953 S. C. 10. Where a person is taken into custody under the Abducted Persons Recovery & Restriction Act, 1949 for the purpose of restoring that person to his or her kin folk in Pakistan, it cannot be said that such restoration is arrest within the meaning of Article 22. Where a minor girl is removed from brothel under an Act which provides for the suppression of immoral traffic, it cannot be said that such a removal is arrest. Where a person is wrongfully confined or where an abducted female is taken into custody under section 100 or under section 552 of the Code of Criminal Procedure, there is no arrest within the meaning of this article. Where a person is arrested under the warrants issued by the Speaker of the State Legislature, the warrants being not judicial, the physical restraint imposed upon that person will amount to arrest. But where the arrest is under warrant of a Civil Court in execution of a decree, such an arrest being under judicial process will not come under the term arrest as used in article 22. *The State of Punjab v. Ajais Singh*, A. I. R. 1953 S. C. 10; I. L. R. 1958 Punjab 121.

901. Right to be defended by a Pleader.

The right to consult and to be defended by legal practitioner of one's choice is guaranteed under clause 1 of article 22 to a person who is arrested. It will not apply to a person who is not arrested at all. In cases in which a person is not actually put under arrest but is only accused of an offence, he may be entitled under section 240 of Criminal Procedure Code to be defended by a Pleader; but this right can be taken away by legislative enactment as it is not guaranteed by the Constitution. Where under the relevant law, an accused person, who is tried by Panchayat Court, cannot engage a pleader it was held by some courts that there was nothing unconstitutional about such law if the accused has not been arrested or detained in custody at all. This right to be defended by a pleader attaches to a person on arrest and continues even when the person is released on giving security etc. This view has been overruled by the Supreme Court. Any provision of the Panchayat Law prohibiting appearance of a legal practitioner to defend the arrested person brought before the Panchayat for trial is violative of Article 22 (1). This was the case relating to section 63 of Madhya Bharat Panchayat Act which was declared to be void, being inconsistent with Article 22 (1). *The State of Madhya Pradesh v. Shobha Ram and others*, Criminal Appeal 20 of 1955, decided on 22-4-1966. By this case, the judgments given in A. I. R. 1952 All. 924, A.I.R. 1957 Punj. 149 and A. I. R. 1955 Orissa 381 were overruled.

There is no guarantee that a lawyer should be engaged at State expense even in cases where death sentences imposed. The accused persons have no right to be defended by counsel provided at public expense *Tara Singh v. The State* A. I. R. 1951 S. C. 441; *Jacoblar Reddy v. State of Hyderabad*, A.I.R. 1951 S. C. 217.

902. Magistrate means magistrate acting as court.

The magistrate referred to in clause 2 of article 22 means a Magistrate acting as a Court. It is necessary that a person must be accused person who must be actually produced before the Magistrate in order to obtain remand.

Where a person was arrested in Bombay and was taken in custody in Lucknow where he was to be produced before the Speaker of the State Legislative Assembly to answer a charge of the breach of the privilege; it was held that as the person was not produced before a Magistrate within 24 hours he was entitled to release : *Ganpati Keshavram Reddy v. Najisul Hasan and the State of Uttar Pradesh* A. I. R. 1954 S. C. 636.

903. Detention by private individual is not covered.

No writ petition can be filed if a person is detained in the illegal custody of a private individual. In such a case there is no question of violation of Article 21. Thus no writ petition can be filed on the ground of detention of a daughter by his father : *Smt. Vidhya v. Shirmarajan Verma*, 1955 (2) S.C.R. 983.

904. Right to appear in examination, is not covered.

It was held by the Supreme Court that the claim of a Government servant to appear in examination is not covered by the definition of "personal liberty". No question of infringement arises in such a case : *Shikshu Hitar-Sang etc. v. State of Rajasthan and others*, Civil Writ Petition No. 34 of 1959.

905. production within 24 hours is mandatory.

A Person arrested must be produced before a court within 24 hours as

required by Article 22 (2) of Constitution, otherwise the accused person will be released. Thus where an accused person was detained in secret custody and was not produced within 24 hours after arrest, he was released on the ground that article 22 (2) was infringed. *Gunupati Keshva Ram Reddy v Nafisul Hassan etc.* A.I.R. 1954 S. C. 626, but if the person concerned is produced in the High Court within the specified period, it does not make any difference that he was not produced before the nearest Magistrate : *State of U. P. v. Abdul Samid*, 1962 Supp (3) S. C. R. 916 : A. I. R. 1962 S. C. 1506.

906. Imprisonment or detention under some law is not a restriction under Article 19.

Article 19 guarantees to the citizens the enjoyment of certain civil liberties while they are free, while articles 20 to 22 secure to all persons, citizens and non-citizens, certain constitutional guarantees in regard to punishment, and prevention of crime. Different criteria are provided by which to measure legislative judgments in the two fields and a construction which would bring within Article 19 imprisonment in punishment of a crime committed or in prevention of a crime threatened would make a *reductio ad absurdum* of that provision. If imprisonment were to be regarded as a restriction of the right mentioned in Article 19 (1)(d), it would equally be a restriction on the rights mentioned by the other sub-clauses of clause (1) with the result that all penal laws providing for imprisonment as a mode of punishment would have to run the gauntlet of clause (2)(6) before their validity could be accepted.

Article 19 of the Constitution give a list of individual liberties and prescribes in the various clause the restraints that may be placed upon them by law so that they may not conflict with public welfare or general morality. On the other hand Articles 20, 21 and 22 are primarily concerned with penal enactments or other laws under which personal safety or liberty of persons could be taken away in the interests of the society and they set down the limits within which the State control should be exercised. Article 19 uses the expression freedom and mentions the several forms and aspects of it which are secured to individuals, together with the limitations that could be placed upon them in the general interests of the society. Articles 20, 21 and 22, on the other hand, do not make use of the expression freedom and they lay down the restrictions that are to be placed on State Control where an individual is sought to be deprived of his life or personal liberty. The right to the safety of one's life and limbs and to enjoyment of personal liberty in the sense of freedom from physical restraint and coercion of any sort, are the inherent birth rights of a man. The essence of these rights consists in restraining others from interfering with them and hence they cannot be described in terms of freedom to do particular things. There is also no question of imposing limits on the activities of individuals so far as the exercise of these rights is concerned. For these reasons, these rights have not been mentioned in Article 19 of the Constitution. An individual can be deprived of his life or personal liberty only by action of the State either under the provisions of any penal enactment or in the exercise of any other coercive process vested in it under law. What the Constitution does therefore is to put restrictions upon the powers of the State, for pro-

protecting the rights of the individuals. The restraints on State authority operate as guarantee of individual freedom and secure to the people the enjoyment of life and personal liberty which are thus declared to be inviolable except in the manner indicated in these articles: *A. K. Gopalan v. State of Madras*, A. I. R. 1950 S. C. 27.

A person who was taken into custody under section 4 of the Abducted Persons (Recovery and Restoration) Act of 1949 was held to have no protection under Article 22 (1). The protection under the Article is given against the act of executive when arrest is made without having recourse to a warrant by a Court: *State of Punjab v. Ajaib Singh* etc. 1963 S. C. R. 254. Similar arrest, made for recovering taxes, is not covered by Article 22: *Collector of Malabar, v. Airi Mal Bhribim Haji*, 1957 S. C. R. 970.

907. Articles 20 to 22 guarantee entire protection of personal liberty, regarding substantive and procedural law.

The group of Articles 20 to 22 embody the entire protection guaranteed by the Constitution in relation to deprivation of life and personal liberty both with regard substantive as well as to procedural law. It is not correct to say that Article 21 is confined to matters of procedure only. There must be a substantive law, under which the State is empowered to deprive a man of his life and personal liberty and such law must be a valid law which the legislature is competent to enact within the limits of the powers assigned to it and which does not transgress any of the fundamental rights that the Constitution lays down. Thus a person cannot be convicted or punished under an *ex-post facto* law or a law which compels the accused to incriminate himself in a criminal trial or punishes him for the same offence more than once. These are the protections provided for by Article 20. Again a law providing for arrest and detention must conform to the limitations prescribed by clauses (1) and (2) of Article 22. These provisions indeed have been withdrawn expressly in case of preventive detention and protections of much more feeble and attenuated character have been substituted in their place; but this is a question of the policy adopted by the Constitution. *A. K. Gopalan v. State of Madras*, A.I.R. 1950 S. C. 27.

908. Protection provided by Articles 20 and 22 is that life and personal liberty can not be affected except under valid law

With regard to life and personal liberty the Constitution guarantees protection to this extent that no man could be deprived of these rights except under a valid law passed by a competent legislature within the limits mentioned above and in accordance with the procedure which such law lays down. Article 19, on the other hand, enunciates certain particular forms of civil liberty quite independently of the rights dealt with under Article 21. Most of them may be connected with or dependant upon personal liberty but are not intential with it, and the purpose of Article 19 is to indicate the limits within which the State could by legislation impose restrictions on the exercise of these rights by the individuals. The reasonableness or otherwise of such legislation can indeed be determined by the Court to the extent laid down in the several clauses of Art. 19, though no such review is permissible with regard to laws relating to deprivation of life and personal liberty. This may be due to the fact that life and personal freedom constitute the most vital and essential rights which people enjoy under any State and in such matters the precise and definite expression of the intention of the legislature has

been preferred by the Constitution to the variable standards which the judiciary might lay down. The proper test for determining the validity of an enactment under which a person is sought to be deprived of his life and personal liberty has to be found not in Article 19 but in the three following Articles of the Constitution. Article 20 of course has no application so far as the law relating to preventive detention is concerned: *Gopalan v. State of Madras*, A. I. R. 1950 S. C. 27 page 93 : 1950 S. C. R. 88.

909 Seven heads of Fundamental rights.

Part III is headed and deals with "Fundamental rights" under seven heads, besides, "General" provisions Articles 12 and 13 namely, (1) "Right to Equality" (Articles 14 to 18) (2) "Right to Freedom" (Articles 19 to 22) (3) Rights against Exploitation" (Articles 23 and 24) (4) "Right to Freedom of Religion" (Articles 25 to 28), (5) "Cultural and Education Rights" (Articles 29 and 30) (6) "Right to property" (Article 31). (7 Right to Constitutional Remedies (Articles 32 to 35). Under the heading "Right to Freedom" are grouped four Articles 19 to 22 Article 19 (1) is in the following terms :—

(1) All citizens shall have the rights :—

- (a). to freedom of speech and expression ;
- (b) to assemble peaceably and without arms ;
- (c) to form associations or unions ;
- (d) to move freely throughout the territory of India ;
- (e) to reside and settle in any part of the territory of India ;
- (f) to acquire hold and dispose of property ; and
- (g) to practise any profession, or to carry on any occupation trade or business.

It will be noticed that of the seven rights protected by cl. (1) of Article 19, six of them, namely (a) (b) (c) (d) (e) and (g) are what are said to be rights attached to the person (*Jus personarum*). The remaining item namely (f) is the right to property (*jus rerum*) If there were nothing else in article 19, these rights would have been absolute rights and the protection given to them would have completely debarred Parliament or any of the State Legislatures from making any law taking away or abridging any of those rights. But a perusal of article 19 makes is abundantly clear that none of the seven rights enumerated in cl. (1) is an absolute right for each of these rights is liable to be curtailed by laws made or to be made by the State to the extent mentioned in the several clauses (2) to (6) of that article. Those clauses save the power of the State to make laws imposing certain specified restrictions on the several rights. The net result is that the unlimited legislative power given by article 246 read with the different legislative lists in schedule 7 is cut down by the provisions of Article 19 and all laws made by the State with respect to these rights must in order to be valid, observe these limitations. Whether any law has in fact transgressed these limitations is to be ascertained by the Court and if in its view the restrictions imposed by the law are greater than what is permitted by clauses (2) to (6) whichever is applicable, the Court will declare the same to be unconstitutional and, therefore, void under Article 13. Here again there is scope for the application of the intellectual yardstick of the Court. If, however, the Court finds on scrutiny, that the law has not overstepped the Constitutional limitations, the Court will have to uphold the law whether it like the law or

not. *Gopalan v. State of Madras*, A. I. R. 1953 S. C. 27 at page No. 109 : 1950 S. C. R. 88.

It seems that Article 19 of the Constitution gives a list of individual liberties and prescribes in the various clauses the restraints that may be placed upon them by law, so that they may not conflict with public welfare or general morality.

910. Articles 20, 21 and 22 put restrictions on State Control in case of deprivation of life and liberty.

Articles 20, 21 and 22 are primarily concerned with penal enactments or other laws under which personal safety or liberty of persons could be taken away in the interests of the society and they set down the limits within which the State control should be exercised. Article 19 uses the expression freedom and mentions the several forms and aspects of it, which are secured to individuals, together with the limitations that could be placed upon them in the general interests of the society. Articles 20, 21 and 22 on the other hand do not make use of the expression "freedom", and they lay down the restrictions that are to be placed on State control where an individual is sought to be deprived of his life or personal liberty. The right to the safety of one's life and limbs and to enjoyment of personal liberty in the sense of freedom from physical restraint and coercion of any sort, are the inherent birthrights of a man. The essence of these rights consists in restraining others from interfering with them and hence they cannot be described in terms of "freedom" to do particular things. There is also no question of imposing limits on the activities of individuals so far as the exercise of these rights is concerned. An individual can be deprived of his life or personal liberty only by action of the State, either under the provisions of any penal enactment or in the exercise of any other coercive process vested in it under law. What the Constitution does, therefore, is to put restrictions upon the powers of the State for protecting the rights of the individuals. The restraints on State authority operate as guarantees of individual freedom and secure to the people the enjoyment of life and personal liberty which are thus declared to be inviolable except in the manner indicated in these Articles *Gopalan's case*.

911. Articles 20 to 22 contain the entire protection of life and liberty.

The group of Articles 20 to 22 embody the entire protection guaranteed by the Constitution in relation to deprivation of life and personal liberty both with regard to substantive as well as to procedural law. It is not correct to say that Article 21 is confined to matters of procedure only. There must be a substantive law under which the state is empowered to deprive a man of his life and personal liberty and such law must be valid law which the legislature is competent to enact within the limits of the powers assigned to it and which does not transgress any of the fundamental rights that the Constitution lays down. Thus a person cannot be convicted or punished under an *ex post facto* law or a law which compels the accused to incriminate himself in a criminal trial or punishes him for the same offence more than once. These are the protections provided for by Article 20. Again a law providing for arrest and detention must conform to the limitations prescribed by clause (2) of Article 22. These provisions indeed have been withdrawn in case of preventive detention and attenuated charges.

been substituted in their place, but this is a question of the policy adopted by the Constitution with which the court is not concerned. The position, therefore, is that with regard to life and personal liberty, the Constitution guarantees protection to this extent that no man could be deprived of these rights except under a valid law passed by a competent legislature within the limits mentioned above and in accordance with the procedure which such law lays down. Article 19, on the other hand, enunciates certain particular forms of civil liberty, quite independently of the rights dealt with under Article 21. Most of them may be connected with or dependent upon personal liberty but are not identical with it, and the purpose of article 19 is to indicate the limits within which the State could by legislation, impose restrictions on the exercise of these rights by the individuals. *Gopalan v. State of Madras*, A.I.R. 1950 S. C. 27.

912. Reasonableness of law can be determined by courts under Article 19, but not of law relating to deprivation of life and liberty.

The reasonableness or otherwise of such legislation can be determined by the Court to the extent laid down in the several clauses of Article 19, though no such review is permissible with regard to laws relating to deprivation of life and personal liberty. This may be due to the fact that life and personal freedom constitute the most vital and essential rights which people enjoy *Gopalan v. State of Madras* A. I. R. 1950 S. C. 27.

913. Articles relating to right to freedom must be considered together.

Articles collected under the caption "right to freedom" have to be considered together to appreciate the extent of the Fundamental Rights. In the first place, it is necessary to notice that there is a distinction between rights given to citizens and persons. This is clear on a perusal of the provisions of Article 19 on the one hand and Articles 20, 21 and 22 on the other. In order to determine whether a right is abridged or infringed it is first necessary to determine the extent of the right given by the Articles and the limitation prescribed in the Articles themselves permitting its curtailment : *A. K. Gopalan v. State of Madras*, A.I.R 1950 S. C. 27.

914. Article 19 does not protect detention under some law.

Where it was contended that as the preventive detention order results in the detention of the applicant in a cell and it was further contended that the rights specified in Article 19 (1) (a)(b)(c)(d)(e) and (g) have been infringed, because of his detention and he cannot have a free right to speech as and where he desired and that the rights mentioned in sub cls (b)(c)(d), (e) and (g) will be infringed, it was observed that if this argument were to hold good in a case which deals with preventive detention, it should also be applicable to the case of punitive detention also, to any one sentenced to a term of imprisonment under the relevant section of the Penal Code, and that so considered the argument must clearly be rejected. In spite of the saving cls (2) to (6) permitting abridgement of the rights connected with each of them, punitive detention under several sections of the Penal Code e.g. for theft, cheating, forgery and even ordinary assault, will be illegal, unless such conclusion necessarily follows from the Article. It was held that such construction should be avoided and such result is clearly not the outcome of the Constitution : *A. K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27.

915. Article 19, when to be read—Legislation must be directly in respect of the fundamental rights.

The article has to be read without any preconceived notions. So read it clearly means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub clauses.

If there is a legislation directly attempting to control a citizen's freedom of speech or expression or his right to assemble peaceably and without arms etc the question whether the legislation is saved by the relevant saving clause of article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects but as a result of the operation of other legislation, for instance for punitive or preventive detention, his right under any of these sub clauses is abridged, the question of the application of Article 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detainee's life. On that short ground the argument about the infringement of the rights mentioned in Article 19(1) generally must fail. Any other construction put on the Article, it seems will be unreasonable: *A. K. Gopalan v. State of Madras*, A. I. R. 1950 S.C. 27 : 1950 S.C.R. 88.

916. Some Instances.

Where a person was detained so that he could be prevented from making speeches which were prejudicial to the maintenance of public order, it was held that the detention order was valid, even if it abridged his right under article 19 (1) (a). *Ram Singh v. State of Delhi*, A. I. R. 1951 S. C. 270 : 1952 S. C. R. 490 (1951 S. C. J. 378).

While interpreting articles 21 and 22, only that interpretation which favours the subject must be adopted so that his fundamental right is fully assured and is not made illusory. *S. Krishnan v. State of Madras*, A. I. R. 1951 S. C. 1 : 1951 S. C. R. 621.

Where there is arrest and detention for the recovery of arrears of tax u/s 46 of the Indian Income Tax Act, article 21 is not contravened. *Parshottam Govind v. B. M. Desai*, A. I. R. 1956 S. C. 20.

The provisions of section 8 of the J & K Preventive Detention Act were held to be valid even when the grounds of detention were not disclosed. On the facts of the case, it was held that articles 21 and 22 were not violated. *P. L. Lakhanpal v. State of J & K*, A.I.R. 1956 S.C. 197: (1955) 2 S. C. R. 1101.

There is no contravention of article 21 or 22 when arrest is made for the recovery of income tax as arrears of land revenue by the collector, as the arrest is made in accordance with the procedure established by law. *Collector of Malabar v. E. R. Haji*, A. I. R. 1957 S. C. 588.

Where a notice was issued for contempt of breach of privilege of legislature and there was deprivation of personal liberty, it was held that the order by which the liberty was taken away was valid, as the deprivation of personal liberty was in accordance with procedure established by law. *U. Sharma v. Srikrishan Sinha*, A. I. R. 1959 S. C. 395.

Where power of confiscation was conferred on a person authorised under section 8 of Drugs and Magic Remedies (Objectionable Advertisement) Act 1954, it was held that the power so conferred was constitutional. *Hamdard Dawkhana v. Union of India*, A.I.R. 1960 S.C. 554: (1960) (2) S.C.R. 671.

The term law as used in article 21 does not cover principles of natural justice : *Ram Chander Prasad v. State of Bihar*, A. I. R. 1961 S. C. 1632 : 1962 2 S. C. R. 50 : (1962) 2 S. C. J. 13.

The detaining authority can supersede earlier order challenged as illegal and make a fresh order, unless there is proof of bad faith. The proposition that procedure established by law must be strictly followed applies even before the coming of the Constitution. *Naranjan Singh v. State of Punjab*. A. I. R. 1952 S. C. 103 : (1952) S. C. R. 335 : (1952) S. C. A. 230 : 1952 S. C. J. 111.

Where a person makes default in the payment of income tax and there is arrest and detention, it is not punishment or penalty and article 22 will not apply to such cases. *Parshotam v. D. M. Desai*, A. I. R. 1956 S. C. 20.

Where a person was arrested and detained for the purposes of deportation on the ground that he was a foreigner and he was not produced within 24 hours of the arrest before the nearest Magistrate, it was held that the detention was not illegal. An alien has no legal right to enter the Indian territory, and where he stays beyond the period of permit, he makes himself liable to deportation. And when he is kept in custody for the purpose of deportation, it cannot be said that he is being detained for the reason of his having committed an offence. Therefore, there is no duty cast upon the authorities to produce the detainee before a magistrate. Magistrate is not competent to pass any order for bail in case the deportation is lawful. *State of U. P. v. Abdul Math* 1962 S. C. 1506.

Where the person is detained under the Abducted Persons (Recovery and Restoration) Act 1949, it cannot be said that the restraint so imposed amounts to arrest, and consequently article 22 will have no application. *State of Punjab v. Ajaib Singh*, A. I. R. 1953 S. C. 10, 1953 S. C. R. 254 : (1952) S. C. A. : (1952) S. C. J. 664.

Where a person is detained without the authority of the Magistrate beyond 24 hours, article 22 (2) is violated. *Ganupati Keshgriam v. Nafisal Hussain* A. I. R. 1954 S. C. 638.

Where a law prescribes maximum period of detention, it does not violate any fundamental right. Period of detention can be altered by Parliament : *S. Krishan v. State of Madras*, A. I. R. 1951 S. C. 601 : (1951) S. C. R. 621 : (1951) S. C. J. 453.

Where there was indefinite detention under the of Preventive Detention Amendment Act 1952, it was held that it was not repugnant to the Constitution. The period was extended upto the expiry of the Act. : *Shamrao v. D. M. Thana*, A. I. R. 1952 S. C. 324 : (1952) S. C. R. 883 : (1952) S. C. J. 635.

Omission to specify definite period of detention does not render the detention order invalid : *Ujagar Singh v. State of Gujrat*, A. I. R. 1952 S. C. 350 : (1952) S. C. R. 756 : (1952) S. C. J. 521.

The words 'such detention' refer to Preventive Detention and not to how long a person is to be detained. Section 11 of the P. D. Act 1950 is not ultravires : *Puranlal Lakhan Pal v. Union of India* A. I. R. 1953 S. C. 163 : (1958) S. C. R. 460.

Clause 4 and clause 7 of article 22 are two alternative provisions for making laws on Preventive Detention and where a law conforms to the conditions as laid down in clause 7, it need not conform to article 19 (5) : *Go-palan v. State of Madras*, A. I. R. (1950) S. C. J. 174 : (1950) S. C. R. 88.

The grounds of detention must be before the Government making the the detention order i. e. the satisfaction of the Government must precede the order of detention. Where supplementary grounds were given to justify the order of detention at a later stage, it was held that there is infringement of article 22 (5) : *State of Bombay v. Atma Ram*, A. I. R. 1941 S. C. 157 (1951) S. C. R. 167.

The detinue has two rights. Firstly, the right to be furnished with grounds and secondly an earliest opportunity to make a representation against the order. The courts can examine the grounds and can further see that the grounds are not vague and indefinite or insufficient which do not enable the detinue to make an intelligible representation: *State of Bombay v. Atma Ram* A. I. R. 1951 S. C. 157 : (1951) S. C. R. 167 : (1951) S. C. J. 208.

Sufficiency of grounds is a matter which the Courts cannot examine. What the Court is to examine is whether the grounds are adequate or not for making the representation. Where the detention order was passed on 26th of February 1960 and the grounds of detention were served on 14th March

1950 it was held on the facts of this case, that this delay did not vitiate the detention order in any way: *Tarapada De v. State of W. Bengal*, A. I. R. 1951 S. C. 174: (1951) S. C. R. 212 : (1951) S. C. J. 233.

It is not necessary to give passages or gist of speeches considered prejudicial to maintenance of public order. If the time and place at which speeches were made are stated, it will be sufficient to sustain the detention order. *Ram, Singh v. State of Delhi*, A. I. R. 1951 S. C. 270 : (1951) S. C. R. 451.

The question of vagueness is to be determined on the facts of each case. *D. Souza v. State of Bombay*, A. I. R. 1956 S. C. 531 : (1956) S. C. R. 352.

The words 'as soon as may be' must be construed harmoniously with the other provisions of the Act. Where the Government will not intimate for two months the grounds of detention, the detention was held to be illegal. *Abdul Jabbar v. State of J. and K.* A. I. R. 1957 S. C. 281.

Where a detinue not knowing enough English is communicated the ground in English, it cannot be said that the grounds have been communicated. In such a case grounds should be in the language which he can understand. *Harkishan v. State of Maharashtra*, A. I. R. 1962 792 S. C. 911 : (1962) (2) S. C. A. 233.

Where one of the grounds is illusory, detention order was held to be vitiated. *Shiv Lal Saxena v. State of U. P.*, A. I. R. 1954 S. C. 179 : (1954) S. C. A. 53 : (1954) S. C. R. 418.

The right of a detinue to be furnished with particulars is subject to the limitation imposed by clause 6 of article 22. *Puran Lal Lakhani v. U. I.*, A. I. R. 1958 S. C. 163 : (1958) S. C. R. 460.

CHAPTER XIX

PREVENTIVE DETENTION

SYNOPSIS

- 917. Public order and Public safety
- 918. Preventive Detention law in conflict with Article 22 is void
- 919. Article 22 lays down safeguards
- 920. Reasonable restrictions, Article 19
- 921. Section 14 of the Preventive Detention Act, 1950 was ultravires
- 922. Preventive Detention defined and distinguished from punitive and arbitrary detention
- 923. Communication of grounds
- 924. Facts need not be communicated in public interest
- 925. One ground vague, effect of
- 926. Object of clause 7 of Article 22
- 927. Due process of law
- 928. Period of Detention not to be communicated by the Board

917. "Public Order" and "Public Safety."

"Public order" and "public safety" are allied matters but in order to appreciate how they stand in relation to each other it seems best to direct attention to the opposite concepts which may be respectively labelled as "public disorder" and "public unsafety". If "public safety" is equivalent to "security of the State", what can be regarded as "public unsafety" may be regarded as equivalent to "insecurity of the State." If the matter is approached in this way it will be found that while "public order" is wide enough to cover a small riot or an affray and other cases where peace is disturbed by or affects a small group of persons, "public unsafety" or "insecurity of the State" will usually be connected with serious internal disorder and such disturbances of public tranquillity as jeopardize the security of the State : *Brij Bhushan v. The State*, A.I.R. 1950 S. C. 129 at p. 130. "Public safety" ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent dangers to public health may also be regarded as securing public safety. The meaning of the expression must, however, vary according to the context : *Romesh Thapar v. The State*, A.I.R. 1950 S. C. 124.

Preaching of communal hatred or creating enmity between different sections of the community ; or doing anything by which communal feelings are aroused, will cause disturbance of public peace. *Virendra v. State of Punjab*, A.I.R. 1957 S.C. 896. Public safety will also include securing of public health by preventing adulteration of food-stuffs etc. Creation of internal disorder or interference with distribution or supply of essential commodities or inducing police or public servants to withhold their services would be included within the meaning of public order : *State of Rajasthan v. Chawla*, A. I. R. 1959 S.C. 544 ; *Hamdani Dawkhana v. Union of India*, A.I.R. 1960 S.C. 554.

Protection of the country from foreign aggression is included when the question of public safety arises : *Brij Bhushan v. State of Delhi* 1950 S. C. R. 605.. Every act of insult or attempt to insult religious feelings does not disrupt the public order but if this is done with a deliberate intention of outraging the religious feelings of a class of persons and there is a calculated tendency to disrupt the public order, the case will be different : *Ranjit Lal v. State of U. P.*, A.I.R. 1957 S.C. 620. In *Superintendent v. Ram Manohar*, 1960 S. C. 633 (640), it was held that preaching of non-violent disobedience to the civil laws or non-payment of Government dues cannot be restricted on the ground of public order.

918 Preventive Detention Law in conflict with Article 22 is void.

The Constitution of India has given legislative powers to the States and the Central Government to pass laws permitting preventive detention. In order that a legislation permitting preventive detention may not be contended to be an infringement of the Fundamental Rights provided in Part III of the Constitution, Article 21 lays down the permissible limits of legislation empowering preventive detention. Article 22 prescribes the minimum procedure that must be included in any law permitting preventive detention and as and when such requirements are not observed the detention, even if valid *ab-initio*, ceases to be "in accordance with procedure established by law" and infringes the fundamental rights of the detenu granted under Articles 21 and 22 (5) of the Constitution. In that way the subject of preventive detention has been brought into the chapter on Fundamental Rights : *State of Bombay v. Atma Ram*, A. I. R. 1951 S. C. 157, at p. 160.

Regarding the general structure of the clause (5) and (6) of article 22 it was observed in *State of Bombay v. Atma Ram*, A. I. R. 1951 S. C. 157, at p. 161 : "In the chapter on Fundamental Rights, the Constitution of India, having given every citizen a right of freedom of movement, speech, etc., with their relative limitations prescribed in the different Articles in Part III, has considered the position of a person detained under an order made under a Preventive Detention Act. Three things are expressly considered. In article 22 (5) it is first to consider that the man so detained has a right to be given, as soon as may be, the grounds on which the order has been made. He may otherwise remain in custody without having the least idea as to why his liberty has been taken away. This is considered an elementary right in a free democratic State. Having received the grounds for the order of detention, the next point which is considered is, 'but that is not enough, what is the good of the man merely

knowing grounds for his detention if he cannot take steps to redress a wrong which he thinks has been committed either in belief in making the grounds, or in making the order.' This clause, therefore, further provides that the detained person should have the earliest opportunity of making a representation against the order. The representation has to be 'against the order of detention because the grounds are only steps for the satisfaction of the Government and on which satisfaction the order of detention has been made. The third thing provided is in clause (6). It appears to have been thought that in conveying the information to the detained person there may be facts which cannot be disclosed in the 'public interest. The authorities are therefore, left with a discretion in that connection under clause (6). The grounds which form the basis of satisfaction when formulated are bound to contain certain facts, but mostly they are themselves, deductions of facts from facts. That is the general structure of clauses (5) and (6) of Article 22 of the Constitution."

919 Article 22 lays down safeguards.

A law providing for preventive detention must not come in conflict with the express provisions of Part III or Article 22 (4 to 7) of the Constitution of India. The mere fact that the Court does not approve of the procedure prescribed by the law providing for preventive detention will not affect the validity of the law : *Gopalan v. The State*, (1950) S. C. R. 88. The minimum procedure prescribed by Article 22 should be made a part of the law providing for preventive detention : *State of Bombay v. Aima Ram*, (1951) S. C. R. 167. The reasonableness of the law coming under Articles 21 and 22 cannot be challenged under Article 19 of the Constitution of India : *Kochuni v. State of Madras*, A. I. R. 1960 S. C. 1080 (1092). The safeguards provided by the Constitution must be jealously watched and enforced by the Courts : *Ram Krishan v. State of Delhi*, (1953) S. C. R. 604 (609).

Safeguards provided by clauses 1 and 2 of Article 22 are not available to a person arrested under a warrant of the Court. The protection by these clauses is against the executive action when the arrest is made without warrants : *State of Punjab v. Ajai Singh*, (1953) S. C. R. 254.

Taking a person into custody under some policy of the legislature which is immune from attack or under the Abducted Persons (Recovery and Restoration) Act of 1949 or removal of a minor girl under some law relating to suppression of immoral traffic or the arrest of a person for recovery of amounts recoverable as land revenue or arrest in execution of a decree are not protected by clause 1 of Article 22 : *Collector of Malabar v. Ebrahim*, A. I. R. 1937 S. C. 688 (691). Article 22 (1) will however, apply to a person arrested under a warrant by an authority other than a Court. Thus where a person is arrested on charge of contempt of the house to the Speaker of the Legislature; or an Editor is arrested under a warrant issued by the Legislature on a charge of contempt, Article 22 will be applicable : *Gana Pati v. Nafisul Hassan* 1954 S. C. R. 36. Extension does not amount to detention : See *Inderjit v. State of Delhi*, A. I. R. 1953 Punjab 52.

Under clause 1 of Article 22 no time-limit is fixed for supplying the grounds to the arrested person. The words 'as soon as may be' require that this must be done within a reasonable time : *Tara Pada v. State of West Bengal*, (1951) S. C. R. 22. It is for the Court to determine, when prayer for habeas corpus is made, whether the arrested person is to be released be-

cause the grounds were not supplied within reasonable time : *State of Bombay v. Atma Ram*, (1951) S. C. R. 167.

An order of detention will not become invalid simply because no period is specified in the order made under section 11 of the Act : *Dattatraya v. State of Bombay*, A.I.R. 1952 S. C. 111. When the period is specified, the same can be extended before its expiry for a period not exceeding the limit of the duration of the Act itself : *Shama Rao v. District Magistrate* A. I. R. 1952 S. C. 324. But the Second Amendment Act, LXI of 1951, the period of original Act was extended upto 31st of December, 1954 and maximum period of detention was prescribed by the new Sec. 11-A of the Act. It was held that Sec. 11-A of the Act by which maximum period was prescribed did not contravene Article 14 of the Constitution although there was differentiation between orders confirmed before 30th September, 1962 and those confirmed under the amended law : *Godazari v. State of Bombay*, (1953) S. C. R. 210.

920. Reasonable restrictions, Article 19.

While determining whether the restrictions are reasonable within the meaning of Article 19 (c) of the Constitution of India, the question for decision is whether the statute under the guise of protecting public interests arbitrarily interferes with private business and imposes unreasonable and unnecessarily restrictive regulation upon lawful occupations ; in other words whether the total prohibition of carrying on the business within a particular period amounts to a reasonable restriction on the fundamental rights in Article (19)(1)(g) of the Constitution. Unless it is shown that there is a reasonable relation of the provisions of the Act imposing restrictions to the purpose in view, the right of freedom of occupation and business cannot be curtailed by it. The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the rights should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of the court which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in the quality : *Chaintaman v. The State* (AIR (39) 1951 SC 118. In this case there was a total prohibition made as far as the manufacture of Biris in a particular period in certain villages was concerned. The order was set aside and the relevant provisions of the Act under which such prohibitory order was passed were declared void. Regarding the jurisdiction of the court to determine the reasonableness of the restrictions, it was observed : "The determination by the Legislature of what constitutes a reasonable restriction is not final or conclusive ; it is subject to the supervision by this Court. In the matter of fundamental rights, the Supreme Court watches and guards the rights guaranteed by the Constitution and in exercising its functions it has the power to set aside an Act of the Legislature if it is in violation of the freedom guaranteed by the Constitution."

Clause (5) of Article 19 must be given its full meaning. The question which the Court has to consider is whether the restrictions put by the impugned legislation on the exercise of the right are reasonable or not. The question whether the provisions of the Act provide reasonable safeguard against the abuse of the power to the executive authority to administer the

law is not relevant for true interpretation of the clause. The court on either interpretation will be entitled to consider whether the restrictions on the right to move throughout India, i. e., both as regards territory and the duration, are reasonable or not. The law providing reasonable restrictions on the exercise of the right conferred by Article 19 may contain substantive provisions as well as procedural provisions. While the reasonableness of restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the court the question of reasonableness of the procedural part of the law. It is obvious that if the law prescribed five years' externment or ten years' externment, the question whether such period of externment is reasonable being the substantive part, is necessarily for the consideration of the court under clause (5). Similarly, if the law provides the procedure under which the exercise of the right may be restricted, the same is also for the consideration of the court, as it has to determine if the exercise of the right has been reasonably restricted. By this interpretation the scope and ambit of the word "reasonable," as applied to restrictions on the exercise of the right, is not in any way unjustifiably enlarged. It seems that the narrow construction sought to be put on the expression, to restrict the court's power to consider only the substantive law on the point, is not correct; *N.B. Khare v. The State*, AIR (37) 1950 SC 311.

921. Sec. 14 of Preventive Detention Act 1950 was *ultra vires*.

The Preventive Detention Act 1950, is not *ultra vires* the Constitution with the exception of Sec. 14 which is illegal. The invalidity of Sec. 14 does not affect the rest of the provisions in the Act: *A.K. Gopalan v. The State*, AIR (37) 1950 SC 27. (Note. It may be noted that Sec. 14 of the Preventive Detention Act 1950 was omitted by Ordinance No. XIX of 1950).

922. Preventive detention defined and distinguished from punitive and arbitrary detention.

Preventive detention can properly be contrasted with punitive detention, one having reference to the apprehension of wrong doing and the other coming after the illegal act is actually committed: *Lakhi Narian Das v. Province of Bihar*, AIR (37) 1950 F.C. at p. 63: 51 Cr. L. J. 921. As the very term implies, the detention is effected with a view to prevent the person concerned from acting prejudicially to certain objects which the legislation providing for such detention has in view: *A.K. Gopalan v. State of Madras*, AIR (37) 1950 SC 27—51 CrLJ 1383.

Preventive detention can properly be contrasted with punitive detention, one having reference to the apprehension of wrong doing and the other coming after the illegal act is actually committed. The word "arbitrary" connotes want of reasonable or proper justification. If a particular piece of legislation is entirely between the ambit of Legislature's authority, there could be nothing arbitrary in it so far as a court of law is concerned. The courts have nothing to do with the policy of the Legislature or the reasonableness or unreasonableness of the legislation: *Lakhi Narian Dass v. Province of Bihar* AIR (37) 1950 FC. 59.

There is no authoritative definition of the term "preventive detention" in Indian law. The word "preventive" is used in contradistinction to the word "punitive." The object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. No offence is proved, nor any charge formulated, and the justification of such detention is suspicion or reasonable probability and not crimi-

nal conviction which can only be warranted by legal evidence: *Gopalan v. The State*, AIR (37) 1950 S.C. 27.

It is important to note that in *State of Bombay v. Atma Ram* AIR (38) 1951 SC 157, at p. 160 it was observed: It has to be borne in mind that the legislation in question is *not an emergency Legislation*. The powers of preventive detention under this Act of 1950 are in addition to those contained in the Criminal Procedure Code, where preventive detention is followed by an enquiry or trial. By its very nature preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end.

923. Communication of Ground.

The grounds should be communicated, as soon as may be, under Article 22(5). As to how soon the grounds will be communicated depends upon the circumstances of each case: *State of Bombay v. Atma Ram*, A. I. R. 1951 S. C. 157.

924. Facts need not be communicated in public interest

Under Article 22(6) the State may refuse to disclose facts in public interest. Thus where the grounds taken was espionage activity, the facts need not be disclosed: *Joseph D' Souza v. State of Bombay*, 1953 S. C. R. 382.

925. One ground vague, effect of

No ground supplied to the detenu should be vague. Even if one ground out of many supplied to the detenu is vague, the order of detention will be quashed: *Ram Krishan Bhardwaj v. State of Delhi*, 1953 S. C. R. 708. The Court can examine the grounds to see whether these afford the earliest opportunity to the detenu to make a representation and it can examine whether the grounds have a rational connection with the object stated in section 3 of the Preventive Detention Act 1950: *Trapade etc. v. State of West Bengal*, A. I. R. 1951 S. C. 174; 1951 S. C. R. 212.

926. Object of clause (7) of Article 22

The crucial question for consideration is whether Section 12 Preventive Detention Act, 1950 mentions any circumstances under which are defined the classes of cases in which authority was conferred by clause (1) to dispense with an Advisory Board. The rule seems clear that in making classification of cases there has to be some relationship of the classification to the objects sought to be accomplished. The question for consideration, therefore, is what object was sought to be accomplished when the Constitution included clause (7) in Article 22. It seems clear that the real purpose of clause (7) was to provide for a contingency where compulsory requirement of an Advisory Board may defeat the object of the law of Preventive Detention. It was incorporated in the Constitution to meet abnormal and exceptional cases, the cases being of a kind where an Advisory Board could not be taken into confidence. The authority to make such drastic legislation was entrusted to the Supreme Legislature but with the further safeguard that it can only enact a law of such a drastic nature provided it prescribed the circumstances under which such power had to be used or in the alternative it prescribed the classes of cases or stated a determinable group of cases in which this could be done. The intention was to lay down some objective standard for the guidance

law is 'not relevant for true interpretation of the clause.' The court on either interpretation will be entitled to consider whether the restrictions on the right to move throughout India, i. e., both as regards territory and the duration, are reasonable or not. The law providing reasonable restrictions on the exercise of the right conferred by Article 19 may contain substantive provisions as well as procedural provisions. While the reasonableness of restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the court the question of reasonableness of the procedural part of the law. It is obvious that if the law prescribed five years' externment or ten years' externment, the question whether such period of externment is reasonable being the substantive part, is necessarily for the consideration of the court under clause (5). Similarly, if the law provides the procedure under which the exercise of the right may be restricted, the same is also for the consideration of the court, as it has to determine if the exercise of the right has been reasonably restricted. By this interpretation the scope and ambit of the word "reasonable," as applied to restrictions on the exercise of the right, is not in any way unjustifiably enlarged. It seems that the narrow construction sought to be put on the expression, to restrict the court's power to consider only the substantive law on the point, is not correct : *N.B. Khare v. The State*, AIR (37) 1950 SC 311.

921. Sec. 14 of Preventive Detention Act 1950 was *ultra vires*.

The Preventive Detention Act 1950, is not *ultra vires* the Constitution with the exception of Sec. 14 which is illegal. The invalidity of Sec. 14 does not affect the rest of the provisions in the Act : *A.K. Gopalan v. The State*, AIR (37) 1950 SC 27. (Note. It may be noted that Sec. 14 of the Preventive Detention Act 1950 was omitted by Ordinance No. XIX of 1950).

922. Preventive detention defined and distinguished from punitive and arbitrary detention.

Preventive detention can properly be contrasted with punitive detention, one having reference to the apprehension of wrong doing and the other coming after the illegal act is actually committed : *Lakhi Narayan Das v. Province of Bihar*, AIR (37) 1950 F.C. at p. 63 : 51 Cr. L. J. 921. As the very term implies, the detention is effected with a view to prevent the person concerned from acting prejudicially to certain objects which the legislation providing for such detention has in view : *A.K. Gopalan v. State of Madras*, AIR (37) 1950 SC 27—51 Cr. L. J. 1383.

Preventive detention can properly be contrasted with punitive detention, one having reference to the apprehension of wrong doing and the other coming after the illegal act is actually committed. The word "arbitrary" connotes want of reasonable or proper justification. If a particular piece of legislation is entirely between the ambit of Legislature's authority, there could be nothing arbitrary in it so far as a court of law is concerned. The courts have nothing to do with the policy of the Legislature or the reasonableness or unreasonableness of the legislation : *Lakhi Narayan Dass v. Province of Bihar* AIR (37) 1950 FC. 59.

There is no authoritative definition of the term "preventive detention" in Indian law. The word "preventive" is used in contradistinction to the word "punitive." The object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. No offence is proved, nor any charge formulated, and the justification of such detention is suspicion or reasonable probability and not crimi-

down and if law means not any particular piece of law but the indefinite and indefinable principles of natural justice which underlie positive system of law, it would not at all be appropriate to use the expression 'established', for natural law or natural justice cannot establish any thing like a definite procedure : *Gopalan v. State of Madras*, A. I. R. 1950 S. C. 27 at page 162 : 1950 S. C. R. 88.

928. Period of detention not to be considered by the Board.

The function of the Board is to advise as to whether there is justification for detention. It need not be consulted if the order of detention is for a period beyond 3 months : *Puran Lal Lakhanpal v. Union of India*, 1958 S. C. R. 463 : A. I. R. 1958 S. C. 163.

of the dealing authority on the basis of which without consultation of an Advisory Board detention could be ordered, beyond the period of three months. In this connection, it has to be seen that the Constitution must have thought of really some abnormal situation and of some dangerous groups of persons when it found it necessary to dispense with a tribunal like an Advisory Board which functions in camera and which is not bound even to give a personal hearing to the detenu and whose proceedings are privileged. The law on the subject of preventive detention in order to avoid even such innocuous institution could only be justified on the basis of peculiar circumstances and peculiar situations which had to be objectively laid down and that was what was intended by clause (7). If the peculiarity lies in a situation outside the control or view of a detained person, then it may be said that the description of such a situation would amount to a prescription of the circumstances justifying the detention for a longer period than three months by a law without the intervention of an Advisory Board. If however, the abnormality relates to the conduct and character of the activities of a certain determinable group of persons, then that would amount to a class of cases which was contemplated to be dealt with under clause (7). In such cases alone arbitrary detention could be held justifiable by law beyond a period of three months: *Gopalan v. State of Madras*, A. I. R. 1950 S. C. 27 at page 83; 1950 S. C. R. 83.

927. Due Process of Law

It is quite clear that the framers of the Indian Constitution did not desire to introduce into our system the elements of uncertainty and vagueness that have grown round the due process doctrine in America. They wanted to make the provision clear, definite and precise and deliberately chose the words 'procedure established by law' as in their opinion no doubts would ordinarily arise about the meaning of this expression. The indefiniteness in the application of the due process doctrine in America has nothing to do with the distinction between substantive and procedural law. The uncertainty and elasticity are in the doctrine itself which is a sort of a hidden mine, the contents of which nobody knows and it is merely revealed from time to time to the judicial conscience of the Judges. This theory, the Indian Constitution deliberately discarded and that is why they substituted a different form in its place which according to them was more specific. It appears that when the same words are not used, it will be against the ordinary canons of construction to interpret a provision in our Constitution in accordance with the interpretation put upon a somewhat analogous provision in the Constitution of another country, where not only the language is different but the entire political conditions and constitutional set up are dissimilar. In the Supreme Court of America stress has been laid uniformly upon the word 'due' which occurs before and qualifies the expression 'process of law.' 'Due' means what is just and proper according to the circumstances of a particular case. It is this word which introduces the variable element in the application of the doctrine, for what is reasonable in one set of circumstances may not be so in another and a different set. In the Indian Constitution, the word 'Due' has been deliberately omitted and this shows clearly that the Constitution makers of India had no intention of introducing the American doctrine. The word established ordinarily means fixed or laid

down and if law means not any particular piece of law but the indefinite and undefinable principles of natural justice which underlie positive system of law, it would not at all be appropriate to use the expression 'established', for natural law or natural justice cannot establish anything like a definite procedure *Gopalan v. State of Madras*, A. I. R. 1950 S. C. 27 at page 162 1950 S. C. R. 68

928 Period of detention not to be considered by the Board.

The function of the Board is to advise as to whether there is justification for detention. It need not be consulted if the order of detention is for a period beyond 3 months *Puran Lal Lakhanpal v Union of India*, 1958 S. C. R. 463 A. I. R. 1958 S. C. 163

of the dealing authority on the basis of which without consultation of an Advisory Board detention could be ordered, beyond the period of three months. In this connection, it has to be seen that the Constitution must have thought of really some abnormal situation and of some dangerous groups of persons when it found it necessary to dispense with a tribunal like an Advisory Board which functions in camera and which is not bound even to give a personal hearing to the detenu and whose proceedings are privileged. The law on the subject of preventive detention in order to avoid even such innocuous institution could only be justified on the basis of peculiar circumstances and peculiar situations which had to be objectively laid down and that was what was intended by clause (7). If the peculiarity lies in a situation outside the control or view of a detained person, then it may be said that the description of such a situation would amount to a prescription of the circumstances justifying the detention for a longer period than three months by a law without the intervention of an Advisory Board. If however, the abnormality relates to the conduct and character of the activities of a certain determinable group of persons, then that would amount to a class of cases which was contemplated to be dealt with under clause (7). In such cases alone arbitrary detention could be held justifiable by law beyond a period of three months: *Gopalan v. State of Madras*, A. I. R. 1950 S. C. 27 at page 83; 1950 S. C. R. 83.

927. Due Process of Law

It is quite clear that the framers of the Indian Constitution did not desire to introduce into our system the elements of uncertainty and vagueness that have grown round the due process doctrine in America. They wanted to make the provision clear, definite and precise and deliberately chose the words 'procedure established by law' as in their opinion no doubts would ordinarily arise about the meaning of this expression. The indefiniteness in the application of the due process doctrine in America has nothing to do with the distinction between substantive and procedural law. The uncertainty and elasticity are in the doctrine itself which is a sort of a hidden mine, the contents of which nobody knows and it is merely revealed from time to time to the judicial conscience of the Judges. This theory, the Indian Constitution deliberately discarded and that is why they substituted a different form in its place which according to them was more specific. It appears that when the same words are not used, it will be against the ordinary canons of construction to interpret a provision in our Constitution in accordance with the interpretation put upon a somewhat analogous provision in the Constitution of another country, where not only the language is different but the entire political conditions and constitutional set up are dissimilar. In the Supreme Court of America stress has been laid uniformly upon the word 'due' which occurs before and qualifies the expression 'process of law.' 'Due' means what is just and proper according to the circumstances of a particular case. It is this word which introduces the variable element in the application of the doctrine, for what is reasonable in one set of circumstances may not be so in another and a different set. In the Indian Constitution, the word 'Due' has been deliberately omitted and this shows clearly that the Constitution makers of India had no intention of introducing the American doctrine. The word established ordinarily means fixed or laid

State is not to enquire into or take notice of religious belief or expression so long as the citizen performs his duties to the State and to his fellows and is guilty of no breach of public morals or public decorum. This may be called the essence of the right conferred by article 25. This right confers not merely to the citizens but also to non-citizens the freedom of conscience and the right freely to profess, practice and propagate religion: *Ratilal v. State of Bombay*, A. I. R. 1954 S. C. 388; *Commissioner v. Lakshmi mandra*, A. I. R. 1954 S. C. 262. As already stated above this right is subjected in every case to public order, health and morality and to the other provisions of part third of the Indian Constitution. The State is competent to regulate and restrict any economic or financial activity which may be associated with the religious practice: *Ratilal v. State of Bombay*, A. I. R. 1954 S. C. 388.

The language used in article 25 and 26 is clear enough to determine without the help of foreign authorities as to what matter comes within the pervue of religion and what do not. Religion has its basis in a system of belief or doctrines which are regarded as conducive to the spiritual realities. It is not correct to say that religion is nothing else but a doctrine of belief. In its outward expression, it may take the form of certain acts. This article protects the freedom of religious opinion as well as acts done in pursuance of the religion and this has been made clear by using the term 'practice of religion'. The prohibition of slaughtering cows does not violate the fundamental right of the Mohammdans as the sacrifice of the cows on Bakr-Id Day, is not an obligatory overt act for a Mohammadan to exhibit his religious belief; *M. H. Qureshi v. State of Bihar*, A. I. R. 1958 S.C. 731; 1959 S. C. R. 629.

931. Religion, meaning of.

The term religion has not been defined anywhere in the Constitution. A religion is a matter of faith but is not necessarily theistic and there are well known religions in India which do not believe in the existence of the God, for example Buddhism and Jainism. It is not an easy task to determine what constitutes essence of a particular religion and it is very difficult to lay down a general formula for this purpose. What constitutes religion has to be seen with reference to the doctrine of that religion. But at the same time, superstitious practices must be kept apart in the interest of society: *Dargah Committee v. Hussain Ali* (1961) 2 S. C. A. 171. A right to elect members of community for the administration of Gurdwara property cannot be said to be a matter of religion for the Sikhs: *Sarup Singh v. State of Punjab*, 1959 Supp (2) S. C.R. 499.

932. State Regulation

Clause 2 of article 25 contemplates regulation of religious practices as such which are protected unless they run counter to public health or morality. State regulations can be applied only to activities which are really of a economic, commercial or political nature, though associated with religious practices: *Rati Lal v State of Bombay*, A.I.R. 1954 S.C. 388.

RELIGIOUS INSTITUTION OF A PUBLIC CHARACTER

Public Institutions mean not merely temples which are dedicated to the public as a whole but include also those institutions which are founded for the benefit of section of public. Any denominational institution or temple would also come under the term religious institution of a public character and the Courts are not competent to read into the article the limitations

CHAPTER XX

RELIGIOUS, CULTURAL & EDUCATIONAL RIGHTS

SYNOPSIS

- 929. Scope of Article 26
- 930. Right of freedom of religion
- 931. Religion, meaning of
- 932. State regulation
- 933. Freedom to manage religious affairs
- 934. Religious denomination or section thereof
- 935. Matters of religion
- 936. Right to administer property in accordance with law
- 937. Freedom as to payment of taxes for promotion of any particular religion
- 938. Protection of cultural and educational rights of minorities.
- 939. Articles 15 and 29
- 940. Discrimination as to admission to educational institutions.
- 941. Minority Community
- 942. Appeal to conserve language is not a corrupt practice
- 943. Fixing seats for a community is illegal
- 944. Some cases

929. Scope of Article 26.

Law can make provision for administration and management of property belonging to a religious institution. Article 26 gives protection to religious practices which are essential and integral parts of religion. No further protection is given. Right to administer and manage property is not protected by Article 26. Thus various provisions of Dargah Khawaja Sahib Act, 1955 were held to be valid in *Dargah Committee, Ajmer etc v. Syed Hussain Ali etc*; 1962 (1) S. C. R. 383.

What is protected by Articles 25 (1) and 26 (b) are religious practices and the right to manage affairs relating to religion. Secular affairs are not covered. *T. S. G. Maharaj v. State of Rajasthan etc*, (1964) S. C. R. 561 : A. I. R. 1963 S. C. 1638.

GENERAL

930. Right of freedom of Religion.

No man is to be discriminated against in religious matters by the law or subjected to the censorship of the State or any public authority and the

merely relating to administration of property belonging to a religious group or institutions are not matters of religion to which clause (h) of the article 26 applies. : *Commissioner v. Lakshmindra T. S. Mutt*, A. I. R. 1954 S. C. 282.

936. Right to administer property in accordance with law.

Clause (d) of article 26 gives to the religious denominations right to administer property in accordance with law. Any law which takes away the right of administration from the hands of a religious denomination altogether and vests this right in any other authority, would amount to a violation of the right guaranteed by the present law: *Commissioner v. Lakshmindra*, A.I.R. 1954 S.C. 282 : 1954 S.C.R. 1005.

937. Freedom as to payment of taxes for promotion of any particular religion.

Article 27 of the Constitution of India guarantees that the public funds raised by taxes shall not be utilised for the benefit of any particular religion or religious denomination. What is forbidden by article 27 is the specific appropriation of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religion or religious affairs. The obvious reasons underlying this provision is that India being a secular State and there being freedom of religion, guaranteed not only to the individuals but also to the groups, it would be against the policy of the Constitution to pay out of public funds any money for the promotion or maintenance of any particular religious denomination: *Commissioner v. Lakshmi mandra*, A.I.R. 1954 S.C. 282.

938. Protection of Cultural and Educational Rights of minorities.

The obvious object of Clause 1 in Article 29 is that any linguistic minority who wants to preserve its own language would not be in any way subjected to restrictions by the State Law. A minority community can effectively conserve its language through an educational institution and it is for this reason that the right to establish and maintain institutions of its choice has been specifically guaranteed by article 29. This, however, is subject to the limitation contained in Clause 2 of Article 29, if such institutions receive State aid. When Articles 29 and 30 are read together, it would imply that the Constitution guarantees a further right to minorities to impart education in a language of their own choice : *State of Bombay v. Bombay Education Society*, (1955) 1 S. C. R. 568.

939. Articles 15 and 29 .

While Article 15 is a protection against discrimination, Article 29 is a protection against a particular kind of wrong, namely denial of admission into educational institutions of the specified kind. Article 15 is available only against the State, whereas article 29(2) is available not against the State but also against any person or authority who may deny the right guaranteed by Article 29 : *State of Bombay v. Bombay Education Society*, A. I. R. 1954 S. C. 737. It is to be noted that the words sex and place of birth which appear in Article 15(1) are omitted from Article 29(2) and a question arises as to which of the two provisions is the controlling provision. Different views have been taken by different High Courts. In a Calcutta case, A. I. R. 1952 Cal. 822, it was held that Article 15(1) is not controlled by Article 29(2) and that Article 15(1) is a general provision. In a Madras case, A. I. R. 1954 Mad. 67 the Madras High Court was of the opinion that Article 29(2) being

merely relating to administration of property belonging to a religious group or institutions are not matters of religion to which clause (b) of the article 26 applies. : *Commissioner v. Lakshindra T. S. Mull.* A. I. R. 1954 S. C. 282.

936. Right to administer property in accordance with law.

Clause (d) of article 26 gives to the religious denominations right to administer property in accordance with law. Any law which takes away the right of administration from the hands of a religious denomination altogether and vests this right in any other authority, would amount to a violation of the right guaranteed by the present law: *Commissioner v. Lakshindra*, A.I.R. 1954 S.C. 282 : 1954 S.C.R. 1005.

937. Freedom as to payment of taxes for promotion of any particular religion.

Article 27 of the Constitution of India guarantees that the public funds raised by taxes shall not be utilised for the benefit of any particular religion or religious denomination. What is forbidden by article 27 is the specific appropriation of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religion or religious affairs. The obvious reasons underlying this provision is that India being a secular State and there being freedom of religion, guaranteed not only to the individuals but also to the groups, it would be against the policy of the Constitution to pay out of public funds any money for the promotion or maintenance of any particular religious denomination: *Commissioner v. Lakshmi mandra*, A.I.R. 1954 S.C. 282.

938. Protection of Cultural and Educational Rights of minorities.

The obvious object of Clause 1 in Article 29 is that any linguistic minority who wants to preserve its own language would not be in any way subjected to restrictions by the State Law. A minority community can effectively conserve its language through an educational institution and it is for this reason that the right to establish and maintain institutions of its choice has been specifically guaranteed by article 29. This, however, is subject to the limitation contained in Clause 2 of Article 29, if such institutions receive State aid. When Articles 29 and 30 are read together, it would imply that the Constitution guarantees a further right to minorities to impart education in a language of their own choice : *State of Bombay v. Bombay Education Society*, (1955) 1 S. C. R. 568.

939. Articles 15 and 29 .

While Article 15 is a protection against discrimination, Article 29 is a protection against a particular kind of wrong, namely denial of admission into educational institutions of the specified kind. Article 15 is available only against the State, whereas article 29(2) is available not against the State but also against any person or authority who may deny the right guaranteed by Article 29 : *State of Bombay v. Bombay Education Society*, A. I. R. 1954 S. C. 787. It is to be noted that the words sex and place of birth which appear in Article 15(1) are omitted from Article 29(2) and a question arises as to which of the two provisions is the controlling provision. Different views have been taken by different High Courts. In a Calcutta case, A. I. R. 1952 Cal. 822, it was held that Article 15(1) is not controlled by Article 29(2) and that Article 15(1) is a general provision. In a Madras case, A. I. R. 1954 Mad. 67 the Madras High Court was of the opinion that Article 29(2) being

which are not there: *Shivankata Verma Dewaru v State of Mysore*, A.I.R. 1958 S.C. 253.

Clause 2 (b) of article 25 empower the State to override religious intentions which prohibit certain classes from entering into temples or other religious institutions. This was one of the causes of dis-union and inequality. The framers of the Constitution were aware of the centrifugal forces working in the country and this clause has been designed specially for bringing about union and equality among the various classes. Sikh, Jain and Buddhists institutions are also covered by the term Hindu religious institutions. It is not necessary that the institutions should have been dedicated to the entire mass of general public. It would suffice even if it is only dedicated to one particular section of the Hindu public. This confers a right on all classes of sections of Hindus to enter into any public temple. *Shivankata Yauma Dewaru v. State of Mysore*, A.I.R. 1958 S.C. 255. This right should be construed liberally but this does not mean that this right is absolute and unlimited. No member of Hindu public can claim that a temple must be kept open day and night and that he should personally perform the services. It is well known practice of religious institutions of all denominations that only limited number of members are entitled to perform the religious services: *Venkataraman Dewaru v. State of Mysore*, A.I.R. 1958 S.C. 255.

933. Freedom to Manage Religious affairs.

Article 26 which deals with the freedom to manage religious affairs must be read subject to article 25 (2)(d) of the Constitution. Article 25 (1) deals only with the rights of an individual whereas article 25(2) has reference to the rights of communities and as such controls not only article 25(1) but also article 26: *Venkataraman v. State* A.I.R. 1958 S.C. 255.

Every denomination, religious in character, has the right to maintain its own religion and charitable institutions and such right is enforceable by or on behalf of a denomination: *Detraja v State of Madras*, A.I.R. 1954 S.C. 282. This right, as already stated is subject to the limitations of public order, morality and health. Where any religious sect is of the opinion as laid down in its holy scriptures that food should be given to the idol at particular hour of the day or periodically ceremonies are to be performed in a certain way and at certain period of the year, the mere fact that they involve expenditure or money will not make these activities as secular activities or of a commercial or economic character.

934. Religious denomination or section thereof.

Denomination means a religious sect or body having a common faith and organisation and is designed by a name which is distinctive: *Commissioner v. Lakshmi Mandra* (1954) SCR 1005.

935. Matters of Religion.

Matters of religion will not cover secular activities and at the same time it is not confined to mere ethical rules on matters of belief, but includes all rituals and observances ceremonies, and modes of worships which are regarded as integral parts of religion: *Commissioner v. Lakshmi Mandra*, 1954 S.C.R. 1005.

To divert the trust property or funds for purpose which an authority created by a State Act or Court considers expedient or proper, although the original objects can still be carried out is an encroachment which is unwarrantable: *Rati Lal v. State of Bombay*, A.I.R. 1954 S.C. 388. Questions

void *State of Madras v. Shri C. Dorairajan*, A. L. R. 1951 S. C. 226

944. Some Cases

Law contained in section 295 A I P C. making insult to Religion an offence is valid *Ramji L. Modi v. State of U P* (1957) S. C. R. 869 Dargah Khwaja Sahib Act, 1935 was held to be valid as it does not violate any religious right of Christia Soofia *Dargah Committee v. Syed Hussain Ali*, 1962(1) S. C. R. 383. Provisions of sections 41, 47(3) to (6), and 53 (3) of the Bombay Public Trust Act 1960 were held to be void as it interfered with the religious rights relating to religious institutions like Matha etc. *R. P. Gandhi v. State of Bombay etc* 1954 S. C. R. 1056. The validity of the Madras Hindu Religious and Charitable Endowments Act, 1951 and Rajasthan Nathdwara Temple Act, 1959 was determined in *Commissioner v. L. T. S. Mulla* 1954 S. C. R. 1023 and *Tilkeyji S. G. Maharaj etc. v. State of Rajasthan etc.*, (1954) S. C. R. 561 A. L. R. 1963 S. C. 16-8. Bihar Hindu Religious Trusts Act, 1950 was held to be valid in *Mahant Mo's Das v. S. P. Singh* 1959 Supp. (2) S. C. R. 553. Election to Gurdwaras is not covered by Article 26 etc. *Sarup Singh v. State of Punjab*, 1959 Supp. (2) S. C. R. 409

Article 25 besides protecting religious beliefs and doctrines, also protects mode of worship, ceremonies, rituals and observances which are integral parts of religion. Thus where the religious head of a community can exercise the power of ex-communication on religious ground, the same cannot be taken away by any law. In this case Bombay Prevention of Ex-communication Act, 1949 came for consideration and the law so far as it took away the power of ex-communication *Sardar S. T. Shah v. State of Bombay*, 1962 Supp. (2) S. C. R. 456, A. L. R. 1962 S. C. 833.

a special provision should be regarded as the controlling provision and it appears that the Madras view is more weighty and this is further supported by the observations of the Supreme Court in *State of Bombay v. Bombay Education Society*, A. I. R. 1954 S. C. 787 where it was observed that Article 15 protects all citizens against discrimination generally but Article 29(2) is a protection against a particular wrong namely denial of admission into educational institution and if we make the application of the maxim '*Generalia specialibus non-derogant*.' It would be clear that a special provision must control a general provision.

940. Discrimination as to admission to educational institutions.

It is not open to the State Government to fix the number of seats available for admission into Government Educational Institutions on the basis of caste or religion of the applicants for admission. The right conferred by Clause 2 of Article 29 is a right conferred on citizen as an individual and not as a member of a class : *State of Madras v. Smt. Champakam Doran Rajan*, A. I. R. 1951 S. C. 226.

Where the Government issued a circular whereby it directed that no primary or secondary school shall admit to a class where English was used as medium of instructions any pupil other than belonging to a section of citizens the language of which was English namely Anglo-Indians and citizens of non Asiatic descent it was held that the order offended against the fundamental right guaranteed by Article 29 : *State of Bombay v. Bombay Education Society*, A. I. R. 1954 S. C. 561. The article will cover all citizens whether they belong to majority or minority. The police power of the State to determine the medium of instructions must bow before the fundamental rights guaranteed by Article 29 and Article 30 to the extent to which it is necessary to give effect to these Articles, A. I. R. 1954 S. C. 561. The right of a minority community to establish and maintain educational institutions is a necessary concomitant to the right to conserve its distinctive language script or culture : *In re Kerala Education Bill*, 1958 S. C. 956.

941. Minority Community

Article 20 gives right to a minority community to maintain its educational institutions in order to conserve its language, culture and script etc. However, admission cannot be denied to a citizen if the institution receives aid from the State. Christians, Anglo-Indians and Muslim were held to be minorities. Linguistic minorities are also covered. A minority educational institution does not cease to be so, because outsiders are also admitted : *In re Kerala Education Bill*, (1959) S. C. R. 995 : A. I. R. 1958 S. C. 956.

Thus a circular debarring admission to students not belonging to Anglo-Indian Community was held to be invalid : *State of Bombay v. Bombay Education Society etc.*, (1955) 1 S. C. R. 569.

942. Appeal to conserve language is not a corrupt practice

Appeal issued during election to voters to conserve language and that the candidate would try to conserve the same is not objectionable in view of Article 29(1) : *Jagdev Singh v. Partap Singh*, A. I. R. 1965 S. C. 183; 1958 D.E. C. 40.

943. Fixing seats for a Community is illegal

Order fixing seats on communal basis in an educational institution is

946. Acquisition—General.

Doctrine of Eclipse is not applicable to post constitutional legislation as a statute void for unconstitutionality is dead and cannot be revalidated. *Mahindralal v. State of U.P.*, A.I.R. 1957 S.C. 1019. Article 31(1) is not to be interpreted on the basis of construction put upon article 21. Article 31(1) does not exclude article 19(1). Where a law deprived a person of his property. It is invalid if it infringes article 19(1) (f.) *K.K. Kochunni v. State of Madras*, A.I.R. 1960 S.C. 1080.

Where the land was acquired under the Bombay Land Requisition Act and the purpose for which the property was taken was not expressly stated, it was held that the Act is not invalid. It is not necessary to set in the order the purpose of requisition. Housing the homeless is a public purpose: *State of Bombay v. B. Munji*, A.I.R. 1955 S.C. 41: 1955(1) S.C.R. 777.

Where accommodation was requisitioned for an employee of Road Transport Corporation, it was held that the requisition was for the public purpose, *State of Bombay v. R. S. Nanji*, A.I.R. 1956 S.C. 294: (1956) S.C.R. 18. Article 31(2) assumes that acquisition can be for a public purpose only. When the aim is to elevate the status of tenants to that of Zimidar and to prevent the accumulation of land in the hands of a few individuals, this is a public purpose: *State of Bihar v. Kameshwar Singh* A.I.R. 1952 S.C. 252: 1953 S.C.R. 889.

Order of allotment of house under rent control act is in the exercise of Police power and not in the exercise of power of eminent domain and article 31(2) has no application: *D. N. Nabirajia v. State of Mysore*, A.I.R. 1952 S.C. 339 : (1953) S.C.R. 744.

Compulsory procurement of foodgrains at fixed price is void: *State of Raj v. Nathu Mal*, A. I. R. 1954 S. C. 307.

Where property is taken within the meaning of article 31(2) for example, as under Land Revenue Act, and rent payable was fixed retrospectively, it was held that it is merely regulation of relation between landlord and tenant and is not acquisition: *Kishan Singh v. State of Raj*, A. I. R. 1955 S. C. 795.

Where there was nationalisation of Bus Transport and the scheme did not provided for compensation to existing permit holders, it was held to be valid. It is not necessary to expressly decide that the scheme is in the interests of public: *S. N. Rao v. State of A. P.*, A. I. R. 1959 S. C. 308

Express mention of public purpose is not necessary: *B. B. Thakur v. State of Bombay*, A. I. R. 1960 S. C. 1203.

Unless material is placed before court, it will not be able to decide that the compensation awarded is inadequate. Thus when the compensation payable on acquisition was equivalent to the undertaking taken over, it was held to be valid: *W. A. Electric Distributing Co. v. State of Madras*, A. I. R. 1962 S. C. 1753.

Public purpose is not a justiciable issue: *Raja Jagarira v. State of Mad.*, A. I. R. 1954 S. C. 357 ; (1954) S. C. R. 781.

An existing law passed within 18 months before January 26, 1950 is not saved, unless it is submitted to the President within three months from such date for his certification: *State of W. Bengal v. Mrs. V. Banerjee*, A. I. R. 1954 S. C. 170 : (1954) S. C. R. 553. The provisions of Land Acquisition Act 1894 dealing with acquisition of land for companies are valid even if the Act contemplated acquisition for a company which may not be for a public purpose: *B. B. Thakur v. State of Bombay*, A. I. R. 1960

CHAPTER XXI

ACQUISITION ETC.

SYNOPSIS

- 945. What is property
- 946. Acquisition—General
- 947. Taxing law
- 948. Money cannot be acquired
- 949. Change of Management is not acquisition
- 950. Private action cannot be challenged
- 951. Administrative order is of no value
- 952. Illegal Seizure
- 953. Some Cases
- 954. Acts which are valid
- 955. Some invalid Acts
- 956. Amendment of Article 31
- 957. Power to examine law of acquisition
- 958. Article 31 A does not revive void laws
- 959. Laws under which estates etc. are acquired, modified etc. are valid
- 960. Estates and rights in Estate
- 961. Transfer of shamlat land etc. to Panchayat is valid
- 962. Taxation laws, Retrospective effect

945. What is Property.

The right of share-holders to elect directors of a Company, to give directions by passing resolution and to present petition for winding up, are not property apart from ownership of the share, as these rights are not transferable : *Charanjit Lal v. Union of India*, A., I. R. 1951 S. C. 48 (1950) S.C.R. 869; (1951) S.C.J. 29.

Deferred payment cannot be called deprivation of property. Simply because there is delay in making payment it cannot be held that section 9 of the Sugar Export Promotion Act 1953 is invalid: *Lord Krishna Sugar Mills Ltd. v. Union of India*, A.I.R. 1959 S.C. 1124.

Right to use public highway cannot be reckoned as property: *Shaghir Ahmed v. State of U. P.*, A.I.R. 1955 S.C. 721 : (1955) S.C.R. 707.

A person who is a preferential share-holder of a company can challenge the constitutionality of a statute, *Dwarakadass Shrinivas v. Sholapur Spinning Company* A.I.R. 1954. S.C. 119 : 1954 S.C.R. 674.

to adhoc committee appointed by Department, it was held that the Bihar Education Code had no greater sanction than an administrative order and is not law and the order passed was held to be illegal: *Dwaraka Nath Tiwari v. State of Bihar*, A. I. R. 1959 S. C. 249.

Where a Dharamasala was built on land belonging to the State with its permission and subsequently the petitioner was dispossessed by an executive order of the S. D. O. and the management was given to the Municipal Committee, it was held that the petitioner's fundamental right was clearly violated: *Bishan Das v. State of Punjab*, A. I. R. 1961 S. C. 1570.

952. Illegal seizure

Illegal seizure of goods in possession of the petitioner in India under no authority of law at the instance of police was held to be violative of fundamental rights and a writ was issued to restore the goods: *Wazir Chand v. State of H. P.*, A. I. R. 1954 S. C. 415: (1955) S. C. R. 408. (1954) S. C. J. 600.

Where a mill producing cotton yarn was closed and order was passed by the State Government under the U. P. Industrial Disputes Act to hand over management of mill to authorised Controller, and when subsequently another order was passed by the Union Government under Essential Supply (Temporary Powers) Act of 1946, whereby the same Person was appointed as authorised controller, it was held that both these orders were invalid as they deprived a person of his property: *Shanti Swarup v. U. O. I.*, A. I. R. 1955 S. C. 624.

953. Some Cases.

Where transfer was allowed subject to confirmation by the custodian under section 5 (a) of the East Punjab Evacuees Administration of Property Act of 1947, it was held that there was no deprivation under article 31: *Sadhu Ram v. Custodian General of East Punjab*, A. I. R. 1958 S. C. 43.

U. P. Transport Services (Development) Act of 1955 passed on 24th of April 1955, cannot get the benefit of Constitution (4th amendment) Act 1955 which received the assent of President on 27-4-1953: *Deep Chand v. State of U. P.*, A. I. R. 1955 S. C. 618.

Where the Estate is taken over by Court of Wards it is merely a suspension of right of management. It is not extinguishment of that right and cannot be called a modification: *Ragbir Singh v. Court of Wards*, A. I. R. 1953 S. C. 373: (1953) S. C. R. 1049.

Except *mokarari* lease, all other kinds of Jagirs including *Bhomicharas*, *Bhomiate*, *Mauji Subgufars* are covered by article 31 (A). Rajasthan Land Reforms and Resumption of Jagirs Act is valid. Assurance of Government not to resume a Jagir cannot amount to estoppel: *Amar Singh v. State of Raj.*, A. I. R. 1955 S. C. 504.

Article 31 (A) gives wider protection than article 31 (4): *Raja Bherbindra Narayan Bhup v. State of Assam*, A. I. R. 1956 S. C. 503.

Where tenants became owners under the Bombay Tenancy and Agricultural Lands Act, it was held to be not compulsory acquisition of any estate by State. There is no extinguishment or modification of Land Lord's right on tillers land: *Sri Ram Ram Narayan Mahdi v. State of Bom.*, A. I. R. 1959 S. C. 459.

Punjab Security of Land Tenure Act of 1953 as amended by Act II of 1955 comes within the purview of article 31 (A): *Atma Ram v. State of*

S. C. 1203. Simply because no compensation has been given for property acquired under Madras Estates Abolition Act 1958, this will not be a ground for its invalidity: *A. B. Chatter v. State of Mad.*, A. I. R. 1954 S. C. 605. The aim of article 31 (A) and (B) is to save certain laws from the operation of certain articles in part III of the Constitution: *Shankri Prasad v. Union of India*, A. I. R. 1951 S. C. 458 : (1951) S. C. J. 775 : (1952) S. C. R. 89. Payment of compensation is not a justiciable issue. It is not open to the Court to enquire whether a deduction which results in reducing compensation is unwarranted and a fraud on Constitution: *State of Bihar v. Kameshwar Singh*, A. I. R. 1952 S. C. 252 : (1952) S. C. R. 889.

Where there was a retrospective legislation with respect to taxation and the law authorised the levy of licence fee retrospectively, it was held that the Bombay Agricultural Produce Markets Act 1939 was not bad: *Mohammed Bhai v. State of Gujarat*, A. I. R. 1962 S. C. 1517.

Article 31 (1) and (2) is designed to protect the rights to property against deprivation by the State through its executive organ: *State of West Bengal v. Subodh Gopal*, A. I. R. 1954 S. C. 92 : (1954) S. C. R. 587.

Where the ruler an of acceding State made absolute Muafi Grants before accession, Government of India cannot revoke these grants after the Constitution: *Varindra Singh v. State of U. P.*, A. I. R. 1954 S. C. 447 : (1955) S. C. R. 415 : (1954) S. C. J. 705.

947. Taxing Law.

A taxing statute may be challenged on the ground of contravention of articles 13 and 14. However, it is also open to attack such a statute under the doctrine of colourable legislation. But the mere fact that tax is unreasonably high or excessive is not sufficient to justify the conclusion that the statute is colourable; but it will be colourable, if it is discriminatory or confiscatory in character: *R. J. B. Singh v. State of U. P.*, A. I. R. 1962 S. C. 1563 (1962) (2) S. C. A. 679.

Article 31 has no application where a person is deprived of his property for the recovery of tax: *Lakshmanappa v. U. O. I.*, A. I. R. 1955 S. C. 3 : (1955) (1) S. C. R. 769.

948. Money cannot be acquired

Clauses 1 and 2 of article 31 are to be read together. Money cannot be the subject matter of acquisition. Where the funds in the hands of the employees consisted of unclaimed wages, it was held that it cannot be taken as vested in the Board. But the fines imposed on labour can be taken as vested in the Board. State is the custodian of abandoned property. *Bombay Dying & Wvg. Co. v. State of Bombay*, A. I. R. 1958 S. C. 532.

949. Change of management is not acquisition.

Where an Act provided for transfer of management from old Board of Trustees to a new one, article 31 (1) is not applicable as it is not a case of compulsory acquisition: *Board of Trustees Tilia College v. State of Delhi*, A. I. R. 1962 S. C. 456.

950. Private action cannot be challenged.

Article 31 does not provide protection against private action. Where a writ was filed against Central Bank of India, it was held to be misconceived: *P. D. Shandasani v. Central Bank of India*, A. I. R. 1952 S. C. 59.

951. Administrative order is of no value.

An order passed by Education Department under the Bihar Education Code, whereby the Managing Committee of School was to hand over charge

- (4) clause 9 of Imports Control Order imposing reasonable restrictions is valid : *Fedco (p) Ltd. v. S. N. Bilgrami etc.*, 1960 (2) S. C. R. 408.
- (5) Section 3 of Imports & Exports Control Act 1947 and para 6 (b) of the Imports (Control) Order 1955 were held to be valid: *Glass C. I. U. Association v. Union of India*, 1962 (1) S.C.R. 862.
- (6) U. P. Sugercane (Regulation of supply and purchases) Act 1953 is valid : *Ch. T. Ramji etc., v. State of U. P.*, A.I.R. 1956 S.C. 676 : 1956 S.C.R. 393.
- (7) Bombay Land Requisition Act 1948 is valid : *State of Bombay v. Bhanji Nunji etc.*, 1955 (1) S.C.R. 777.
- (8) Land Aquisition (Amendment) Act 31 of 1962 is valid : *R. L. Arora v. State of U. P.*, A.I.R. 1964 S.C. 1230.
- (9) Madras State (Abolition and Conversion into Ryotwari Act of 1948 is valid and has been included in Article 31 B: *Sri Raja v. Venkata v. State of A.P.*, 1960 (1) S.C.R. 552.
- (10) U. P. Consolidation of Holdings Act 1954 is valid : *Attarsingh v. State of U. P.*, (1959) Supp (1) S.C.R. 928.
- (11) Section 29 B of the Bombay Agricultural Produce Market Act 1939 validating collection and levy of license fee is valid. Retrospective effect can be given : *Muhammadbhai v. State of Rajasthan*, 1955 (2) S.C.R. 875 : A.I.R. 1962 S. C. 1517.
- (12) Marwar Land Revenue Act, 1949, Land Regulation Act, 1949 regulating relation between land-lord & tenant is valid: *Kishan Singh v. State of Rajasthan*, 1955 (2) S. C. R. 531.
- (13) Electricity Act 1910 is valid: *Okara Electirc Supply Co. v. State of Punjab*, 1960 (2) S. C. R. 239.
- (14) Coal Bearing Area (Acquisition and Development) Act 1957 is valid: *M/s Barrakar Coal Co. v. Union of India*, 1962 (1) S. C. R. 44.

955. Some invalid Act.

1. Madras Linginte (Acquisition of Land) Act, 1953 was held to be void, as under it compensation was payable for acquisition for value with reference to some date prior to acquisition. The right of just indemnification granted by Article 31 was held to be violated: *State of Madras v. D. Vamasirays* A.I.R. 1965 S.C. 160. Law under Article 21(1) will not be sustained if the restrictions are unreasonable: *K. K. Kochuni v. State of Madras* (1960) 3S.C.R. 882.

2. Bombay Labour welfare fund Act of 1953 was declared void as it deprived the employer of moneys without giving any compensation: *Bombay Dyeing and Manufacturing Co. v. State of Bombay*, 1958 S.C.R. 1123. A.I.R. 1958 S.C.R. 329.

3. Section 3, 4 and 6 of Bombay Land Tenure Abolition Laws (Amendment Act 1956 was declared to be void: *M. S. J. Ranmal v. State of Gujarat*, A. I. R. 1962 S. C. 891

4. Madras Marumakkathoyam (Removal of Doubts) Act 1954 being not in public interest was declared void: *K.K. Kochuni v. State of Madras*, 1960 (3) S.C.R. 882.

Punjab, A. I. R. 1959 S. C. 519.

Ajmer Abolition of Intermediaries and Land Reforms Act is meant to serve the purpose of the Act, that is, the abolition of intermediaries and so is protected by article 31 (A): *Raghubir Singh v. State of Ajmer*, A. I. R. 1951 S. C. 475.

Where the H. P. Abolition of Big Landed Estates and Land Reforms Act was declared invalid by the Supreme Court and which was subsequently validated by another Act, it was held that the validity is not liable to be challenged under article 19 and 31 : *Jadab Singh v. H. P. Admn.*, A.I.R. 1960 S. C. 1008.

Acquisition of right to hold *Melas* on Bakasht lands is saved by article 31 (a), because such a right is an estate; *State of Bihar v. Remeshwar Prasad*, A. I. R. 1961 S. C. 1649.

Article 31 (a) (2) (a) refers not only to estates but also to its local equivalent. Thus *Bhuswami* in Bihar paying land revenue to State is a tenure holder under the M. P. Land Revenue Act and it was held in substance as estate: *N. Bhai Ramji v. State of Bombay*, A.I.R. 1961 S.C. 1571: (1962) (1) S.C.R. 733. Inams are estates and abolition of Inams under Bombay Personnel Inams Abolition Act was held to be saved from attack under article 31 (a): *Gangadhar v. State of Bombay*, A.I.R. 1961 S.C. 1288 (1961) (1) S.C.R. 953.

Lands held by Ryotwari Pattadars in South Kanara District are not estates and therefore Kerala Agrarian Relations Act of 1961 is not saved by article 31 and 31(A). *K.K. Komman v. State of Kerala*, A.I.R. 1962 S.C. 723: (1962) (2) S.C.A. 1. Assam Fixation of Ceilings of Land Holding Tax cannot be called a colourable piece of legislation and falls within the protection guaranteed by article 31 (A). *Sengupta Tea Company v. Dy. Commissioner* A.I.R. 1962 S.C. 137 (1962) S.C.R. 724. *Pandoravaka Kerpattilam* lands and *Puravaki* lands in Kochin can be regarded as local equivalents of estates and, therefore, Kerala Agrarian Relations Act of 1961 stands protected by article 31 (A): *Parshotaman Nambudri v. State of Kerala*, A.I.R. 1962 S.C. 694. Madras Estates Abolition and Conversion into Ryotwari Act 1958 cannot be challenged on the ground that it offends section 299 of Government of India Act 1935: *Raja of Yankatgri v. State of Andhra*, A.I.R. 1960 S.C. 32. Constitution is not retrospective and Jagirs taken over prior to Constitution are not covered by the Constitution. *Hyd. Abolition of Jagirs Regulations* cannot be challenged on ground of want of legislative competence or colourable exercise of legislative authority: *Server Lal v. State of Hyderabad*, A.I.R. 1960 S.C. 862.

954. Acts which are valid.

The following Acts have been declared to be valid :—

- (1) Land Acquisition Act 1894 is valid : *B. B. Thakur v. State of Bombay Etc.*, 1961 (1) S. C. R. 128.
- (2) Bombay Personal Inams Abolition Act 1952, being protected by Article 31 is valid : *G. N. Majumdar v. State of Bombay* 1961 (1) S. C. R. 943.
- (3) Bombay Tenancy and Agricultural Lands Act 1948, being protected by Article 31—B is valid : *V. M. Sanjanwala v. State of Bombay*, 1961 (1) S.C.R. 341.

- pure Tea Co Ltd Mst v Mazurunessa* 1962 (1) S C R 724
- (8) Bombay Tenancy and Agricultural Lands Amendment Act
S R R Narnain Mend v State of Bombay 1959 Supp (1)
 S C R 490
- (9) Punjab Security of Land Tenure Act 1953 *Atma Ram v*
State 1959 Supp (1) S C R 102 A I R. 1959 S C 519
- (10) Madras Estate (Abolition and Conversion into Ryotwari) Act
 of 1948 *Raja Venkatasw v State of Andhra Pradesh* 1950
 (1) S C R 552

960 Estate or rights in estate

An intermediary must exist in an estate before it comes within the provisions of Article 31 A. Proprietor of the soil should hold the estate and should be in direct relationship with the estate. Local definition of the estate should be kept in view. Narrow construction should not be adopted. *P Nambudiri v State of Kerala* A I R. 1962 S C 694 1962 Supp (1) S C R. 753. Pandava Verumpattam and Puravali lands in Cochin are covered by the definition of estate. *P Nambudiri v State of Kerala* A I R 1962 S C. 694. *Ijara Istamarar* is included. *Raja Ram v State of Rajasthan* Petition No 259 of 1965 decided on 28-2-66. Right to hold Mela is estate. *State of Bihar v R P N Singh* 1962 (2) S C R 382

961. Transfer of Shamilat Land etc. to Panchayat is valid

Shamilat deb can be transferred to Panchayats. Similarly non proprietors can be made owners of abadi deh. These acts are protected by Article 31 A because the object of the law is to advance agrarian reform. *Ranjit Singh v State of Punjab* A I R 1965 S C. 632

962 Taxation Law Retrospective validation

Law of Taxation can be validated retrospectively. *V K Chhipa v State of Gujarat* (1962) Supp 3 S C R 875 A L R. 1962 S C R 1517

956 Amendment of Article 31(2)

Constitution IV Amendment Act amended Article 31 and a new clause 2-A was added with a view to supersede the view expressed in these cases: *Dwarkanadas Shrinivas of Bombay v. Sholapur Spinning and Weaving Co. Ltd.* 1953 S.C.R. 674; *State of West Bengal v. Subodh Gopal Bose*, 1954 S.C.R. 787 *Gullia Palli Nageshwar a Rao etc. v. Andhra Pradesh State Road Transport Corporation* 1959 Supp (1) S. C. R. 319; *Saghir Ahmad v. State of U. P.* (1955) 1 S.C. R. 707.

957. Law of Acquisition, power to examine.

Legality of the law on the ground of inadequacy of compensation provided by it cannot be examined by Courts. But if the principles laid down by the law are not relevant to the property acquired, these can be declared as void : *P. V. Madaliar v. Special Collector*, A. I. R. 1965 S. C. 1017. In this case the compensation provided was illusory and it was found to be a fraud on the law.

Compensation must be just and equivalent to what the owner has been deprived of by acquisition : *State of West Bengal v. Bela Banerjee etc.*, 1954 S.C.R. 558.

958. Article 31-A does not revive void laws.

Bombay Act IV of 1948 was held to be void at the time it was made and so there was no question of applicability of Article 31-A : *N. B. Jeejabhoy v. The Asst. Collector*, A.I.R. 1965 S.C. 1096.

959. Laws under which estates etc. are acquired, modified etc. are valid.

Article 31-A will save laws, which deal with extinguishment, modification etc. of estates or rights therein. Thus *Saurashtra Bakshati Abolition Act 1951* was held to be valid: *J. N. Manshinghji v. State of Saurashtra*, C. A. 233 of 1258 decided on 20-4-65. Some other laws saved by Article 31-A are:—

- (1) Bombay Personal, Inams Abolition Act 1952 : *G. N. Majumdar v. State of Bombay*. (1961) S.C.R. 943.
- (2) Rajasthan Land Reforms and Resumption of Jagirs Act. *Raja Ram Singh v. State of Rajasthan*, Petition No. 259 of 1955 decided on 28-2-66.
- (3) Vindhya Pradesh Abolition of Jagirs and Reforms Act, 1952 *State of Vindhya Pradesh v. Moradhwaj Singh etc.* 1960 (3) S.C.R. 106.
- (4) Himachal Pradesh Abolition of Big Landed Estate and Reforms Act, 1963 : *Jadab Singh etc. v. Himachal Administration etc.* 1960 (3) S.C.R. 755.
- (5) Assam State Acquisition of Zamindars Act, 1951: *Bhaisebendra v. State of Assam*, (1956) S. C. R. 303 : A. I. R. 1956 S.C. 404.
- (6) East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 as amended by Act 27 of 1960 : *Ranjit Singh v. State of Punjab*, A.I.R. 1965 S.C. 632.
- (7) Assam Fixation of Ceiling on Land Holding Act 1957. *Sona-*

CHAPTER XXIII

FUNDAMENTAL RIGHTS AND ARMED FORCES

SYNOPSIS

- 964. General
- 965. Army Act, 1950 does not violate Article 14
- 966. Central Government confirming the order passed by Court Martial—Nothing illegal.
- 967. Government servant not included

964. General.

Article 33 of the Constitution of India gives power to the Parliament to restrict the fundamental rights so far as these rights have been conferred on members of armed forces or the forces charged with the maintenance of public order so as to ensure the proper discharge of their duties and the maintenance of the discipline among them, this Article is a sort of proviso to the fundamental rights contained in part III of the Constitution.

Some of the instances where the fundamental rights may be infringed are as follows :

Under section 12 of the Army Act, 1950, Section 12 of the Air Force Act, and under Section 9 (2) of the Navy Act 1957 a female is not entitled to be enrolled as member of these forces.

Similarly there are other sections in the above mentioned Acts which restrict the fundamental rights of freedom of speech and expression.

It may be seen that the Military law in India stands consolidated in shapes of various Acts for example Army Act 1950. Air Force Act 1950 and Navy Act of 1957. The Constitutional position of the Armed Forces in India imposes a double Liability. A soldier has all the rights and liabilities of an ordinary citizen superimposed by special incidents which may arise by virtue of the special Acts governing them.

There are certain privileges also which are attached to persons serving in the Armed Forces; for example the pay and other allowances of any person subject to the Acts mentioned above cannot be attached.

The person serving in the Forces are tried by special Court known as Court Martial.

Under Article 34 there are restrictions imposed on the rights of the Citizen when there is Martial law in force. Article 35 deals with the power of the Parliament to make special law for matters which may fall under Article 33 and Article 34.

Where the accused merely alleged that some of his relatives were not allowed to meet him which resulted in a denial of opportunity to defend himself in as much as he could not seek the help of a civil lawyer, it was held that as no

CHAPTER XXII

RIGHT TO CONSTITUTIONAL REMEDIES

SYNOPSIS

963. Object and effect of Article 32

963. Object and effect of Article 32.

The power which is conferred by Article 32 of the Constitution of India is the most powerful weapon in the hands of the Supreme Court of India to keep the Legislature and the Executive within bounds of their respective authority so that they may not interfere with the fundamental rights of the Citizens : *Kochunni v. State of Madras*, A. I. R. 1959 S. C. 727.

Clause I of Article 32 guarantees the right to move the Supreme Court for seeking relief from the Court by way of five writs as contained in the clause. The effect of this guarantee is that the right guaranteed by Article 32 cannot be suspended except as otherwise provided by the Constitution itself. One of the circumstance under which the right can be suspended is as mentioned Article 359 when a proclamation of emergency is in force. Thus any law which renders the provisions of Article 32 illusory or nugatory is void : *Gopalan v. State*, A. I. R. 1950 S. C. 27, 1950 S. C. R. 88; *Mahhan Singh v. State*, A. I. R. 1964 S. C. 381. But where the Constitution itself protects any suspension of the right conferred by Article 32 it cannot be called illegal : *Sommawanti v. State of Punjab*, A. I. R. 1954 S. C. 131

The Scope of this Article has been discussed in detail in the various chapter dealing with Judiciary.

767. Government servant not included.

It is wrong to say that the Constitution excludes Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons are specifically named. Article 33 selects two of the Services under the State namely members of the armed forces and forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place. This being limited to ensure the proper discharge of duties and maintenance of discipline among them. The Article having thus selected the services, member of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limit within which such restrictions or abrogation might take place, other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restriction of certain freedoms in relation to Article 19 (1) (e) & (g) : *Kameshwar Prasad v. State of Bihar*, A.I.R. 1962 S.C. 1166.

In construing the validity of Section 3 of the Pepsu Police (Incitement to Disaffection) Act of 1953, the provision contained in Art 33 of the Constitution has no relevance. That Article merely prescribes that Parliament may by law determine to what extent any of the rights conferred by Part III shall in their application to members of the Armed Forces or Forces charged with maintenance of Public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. No, doubt, the impugned provision is concerned with ensuring discipline among the forces charged with the maintenance of public order but as powers of the President were exercised by virtue of the declaration contained in Section 2 of Act XXII of 1953 under which only the powers of the State legislature were vested in him, any law enacted by him would not have the force of Parliamentary legislation contemplated by Article 33: *Dalbir Singh v. State of Punjab*, A. I. R. 1960 S.C. 1103.

request was made to Court martial and as there was no refusal it cannot be said that there is any violation of Article 20.

Each and every provision of the Act is a law made by Parliament and if any provision affect the fundamental right under Part III of the Constitution, that provision does not, on that account become void, as it must be taken that the Parliament has thereby, in the exercise of its power under Article 33 of the Constitution, made requisite modification to affect the respective fundamental rights: *Ram Sarup v. Union of India*, A. I. R. 1965 S. C. 247.

965. Army Act, 1950 does not violate Article 14.

Provisions of the Army Act as contained in section 125 of the Act does not violate Article 14 of the Constitution of India. This provision applies to all those person who are governed by Army Act and there arises no question of any discrimination as the persons governed by the Army Act constitutes a class in themselves. Though section 125 of the Act does not contain any thing which may be said to guide the discretion vested in the military officer but the discretion to be exercised by the military officer specified in section 125 of the Act as to the trial of an accused by Court martial or by an ordinary Court, cannot be said to be unguided by any policy laid down by the Act or uncontrolled by any other authority: *Ram Sarup v. Union of India*, A. I. R. 1965 S. C. 247.

966. Central Government confirming the order passed by Court Martial—Nothing illegal.

The grievance of the accused was that because the Central Government had itself exercised the power to confirm the sentence passed by the Court Martial the order of confirmation was illegal in as much as he was deprived of the remedy of going to another authority against the order of confirmation.

The mere fact the order of confirmation is passed by the Central Government it is no ground for declaring it bad. Where the Central Government itself has exercised the power of confirmation of the sentence awarded by the General Court-Martial, it being the highest authority mentioned in sub s. (2) S. 164 of Army Act, 1950 there can be no occasion for a further appeal to any other body. Therefore no justifiable grievance can be made of the fact that the petitioner had no occasion to go to any other authority with a second petition as he could possibly have done in case the order of confirmation was by any authority subordinate to the Central Government. The Act itself provides that the Central Government is to confirm the findings and sentences of General Court-Martial and therefore it could not have been contemplated, by the provisions of S. 164 that the Central Government could not exercise this power but should always have this power exercised by any other officer which it may empower in that behalf by warrant. Each and every provision of the act is a law made by Parliament and that if any such provision tends to affect the fundamental right under part III of the Constitution that provision does not, on that account, become void, as it must be taken that Parliament has thereby in the exercise of its power under Art. 33 of the Constitution, made the requisite modification to affect the respective fundamental rights: *Ram Sarup v. Union of India*, A. I. R. 1965 S. C. 247.

cles 19 will be declared as valid if objects of these principles is achieved: See *In re Kerala Education Bill*, A. I. R. 1958 S.C. 986.

969. Fundamental Rights although in conflict with Directive Principles must be enforced.

Fundamental rights even though in conflict with Directive Principles must be enforced by law courts. A law must not infringe fundamental rights. If it does so, it will be declared void and the plea that it is in accordance with Directive principles will be of no avail: *State of Madras v. Champakam*, 1951 S.C.R. 525; *Hanif Quareshi v. State of Bihar*, A.I.R. 1958 S.C. 731, 1959 S.C.R. 629.

970. Education grant cannot be claimed as of Right-Purpose of Article 30(1) cannot be defeated.

Article 45 does not give any right to any school to demand grant in aid. Fundamental rights under Article 30 (1) cannot be taken away under the colour of Directive Principles: *In Kerala Education Bill*, A.I.R. 1958 S.C. 986.

971. Fee concession cannot be claimed as of right-Harijan colony can be built

Justiceable rights are not granted under Article 45. If school fee concession is denied to any member of a backward class, he cannot claim relief from the court, on this ground. The fundamental rights are not to be infringed in promoting the educational and economic interests of the weaker section of society: *State of Madras v. Champakam*, 1951 S.C.R. 525

Article 15 and 29(2) have been amended by the Constitution (First Amendment) Act, 1951. By this amendment, the State can now make special provisions for the habitation of Harijans. Thus a State Colony for the habitation of Harijans can be built now, notwithstanding the bar against discrimination on the ground of caste.

972. Prohibition laws can be made.

A law providing for the prohibition of consumption or production of liquor is valid and the restrictions imposed are not unreasonable having regard to Directive Principles contained in Article 47: *State of Bombay v. Balsara*, (1951) S.C. R. 682

973. Slaughter of milch animals, where allowed.

The prohibition regarding slaughter of animals is confined to cows and calves and to those animals which fall within the definition of milch cattle. Thus milch cattle will be protected: *Hanif Quareshi v. State of Bihar* 1958 S.C. 731(1959) S.C.R. 629.

Various acts concerning the ban on slaughter on bulls, and buffaloes came up for consideration in the case of *Abdul Hakim v. State of Bihar*, A. I. R. 1961 S. C. 448; 1961 (2) S. C. R. 610. While relying on an earlier decision in *Mohd. Hanif Qureshi v. State of Bihar*, 1959 S. C. R. 629, it was held that the acts in so far as they put a total ban on slaughter without any regard to the usefulness of those animals operates as an unreasonable restriction on the fundamental rights of the butchers. In the Bihar Preservation and Improvement of Animals Act, the age limit for slaughter was fixed at 25 years. It was held that such a condition is unreasonable and will lead to economic disadvantage of feeding and maintaining unserviceable cattle.

CHAPTER XXIV

DIRECTIVE PRINCIPLES OF STATE POLICY

SYNOPSIS

968. Directive principles—Scope of—Validity of law, whether can be determined on their basis.
999. Fundamental Rights although in conflict with Directive principles must be enforced.
970. Education grant cannot be claimed as of Right—Purpose of Article 30 (1) cannot be defeated.
971. Fee concession cannot be claimed as of right—Harijan colony can be built.
972. Prohibition Laws can be made.
973. Slaughter of milch animals when allowed.
974. Distinction cannot be made between private and public undertaking's workers
975. Living wage and Directive principles
976. Living wage—Meaning of
977. Wage structure, three categories
978. Validity of laws cannot be tested with respect to Directive principles
979. Concept of minimum wage is in harmony with modern trend
980. Directive principles not to be enforced at the expense of minorities.

968. Directive principles—Scope of—Validity of law, whether can be determined on their basis.

The State should follow the directive principles both in administrative matter as well as in making laws. These principles contain aims and objects of a welfare state as opposed to a 'Police State'. But if an Act contravenes these principles it will not be declared void: *Deep Chand v. State of U. P.*, A.I.R. 1959 S. C. 648 nor do these confer any rights and these cannot be enforced by courts. No body can violate any law on the ground that he is following Directive Principles. The validity of a law will be determined with reference to the law making power conferred by the legislative lists and not with reference to these principles: *Deep Chand v. State of U. P.*, A.I.R. 1959 S. C. 648 but the tendency of these principles can be examined in order to declare a law valid. Thus an order of acquisition will be declared valid, if it achieves the object of Part IV of the Constitution: *State of Bihar v. Kameshwar* A.I.R. 1952 S. C. 252. Similarly restrictions imposed under Arti

shall direct its policy towards securing equal pay for equal work for both men and women and Article 43 enjoins on the State to endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. This constitutional directive will certainly be disobeyed if the State attempts to make a distinction between the same class of labourers on the ground that some of them are employed by a company financed by it and the other by companies floated by private enterprise. These Article do not countenance the invidious distinction on the basis of the character of the employer. The Legislatures in India even before the coming in to force of the Constitution passed Acts regulating industries such as the Industrial Disputes Act, 1938, Industrial Employment (Standing Orders) Act, 1946 and Industrial Disputes Act, 1947. In these Acts no distinction is made between industries in Public and Private sectors vis-a-vis the service conditions of the labourers: *Hindustan antibiotics v. Workmen*, A. I. R. 1967 S. C. 948.

975. Living wage and Directive Principles.

The object of the industrial law is two-fold, namely, (i) to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life, and (ii) by that process, to bring about industrial peace which would in its turn accelerate productive activities of the country resulting in its prosperity. The prosperity of the country, in its turn, helps to improve the conditions of labour. By this process, it is hoped that the standard of life of the labour can be progressively raised from the stage of minimum wage, passing through need-found wage fair wage, to living wage. Industrial adjudication reflected in the judgments of tribunals and the Courts have evolved some principles governing wage fixation though accidentally they related only to industries born in the Private sector. The Principle of region-cum-industry, the doctrine that the minimum wage is to be ascertained to the labour irrespective of the capacity of the industry to bear the expenditure in that regard, the concept that fair wage is linked with the capacity of the industry, the rule of relevancy of comparable concerns, and the recognition of the totality of the basic wage and dearness allowance that should be borne in mind in the fixation of wage structure are well settled and recognised by industrial adjudication. See *M/s Crown Aluminium works v. Their workmen*, 1958 S. C. R. 651; *Express Newspapers (Private) Ltd. v. Union of India* 1959 S. C. R. 12; *French Motor Car Co. Ltd. v. Workmen*, 1963 Supp (2) S. C. R. 16

In *Hindustan Times Ltd. New Delhi v. Their Workmen*, 1964-1 S. C. R. Das Gupta, J. said at p. 240.

"In trying to keep true to the two points of social philosophy and economic necessities which vie for consideration, industrial adjudication has set for itself certain standards in the matter of wage fixation. At the bottom of the ladder, there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to be approximate to the need based minimum. In the sense of a wage which is adequate to cover the normal needs of the average employee regarded as a human being in a civilised society, Above the fair wage is the living wage—a wage which will maintain the workman

The freedom to carry on business is subject to reasonable restrictions. The phrase 'reasonable restriction' in this context connotes that the limitation imposed on a person's enjoyment of the right should not be arbitrary or of an excessive nature. The word 'reasonable' implies intelligent deliberation i. e. the choice of force which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness. A restriction should strike a proper balance between the freedom guaranteed and the social control permitted. The nature of the right alleged to have been infringed and the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict : *Express Newspapers Ltd. v. Union of India*, A. I. R. 1958 S. C. 578 1959 S. C. R. 912.

Clause 6 of article 19 protects a law which imposes reasonable restrictions in the interests of public on the exercise of the right conferred by article 19 (1) (g). It is the duty of the Court in case of a dispute to determine the restrictions imposed by the law. In determining this question the Court should not proceed on a general notion of what is reasonable in the abstract. The right which is conferred by article 19 (1) (g) would have been absolute but for the qualifying provisions contained in clause 5th of the article. The reasonableness of U. P. Prevention of cow slaughter Act 1956, and C. P. and Berar Animal Preservation Act 1949, came up for consideration before the Supreme Court and it was held that the Bihar Act in so far as it prohibits the slaughter of cows of all age and calves of cows and buffaloes male and female is constitutionally valid and in so far as it totally prohibits the slaughter of the buffaloes, breeding bulls and working bulls without prescribing any test or requirement as to the age or usefulness, it infringes article 19 (1) (g). Similar observations were made so far as the C. P. and Berar Act of 1949 is concerned : *M. H. Qureshi v. State of Bihar*, A. I. R. 1958 S. C. 731 : 1958 S. C. J. 975.

The provision of Bihar Act 2 of 1956 and U. P. Act 1 of 1956 came up for consideration before the Court in the case of *Mohd. Hanif Qureshi and other v. State of Bihar*, 1959 S. C. R. 629 and it was held that the provisions of these Act in so far as they ban cow slaughter irrespective of their age and other conditions is unconstitutional. There is no doubt that the country is in short supply of much cattle, breeding bulls and working bulls and total ban on the slaughter of these animals is essential in the interest of the national economy for the supply of milk, agricultural working power and manure. When restriction is imposed regarding the total ban of these animals it is a reasonable restriction in the interest of general public. A total ban, however, on the slaughter of useless cattle which involves a wasteful drain on the country's cattlefeed which is in itself short supply and which will deprive the useful cattle of much needed nourishment cannot be justified as being in the interest of the general public. The legislature, no doubt, is the best judge of what is good for the community, but a constitutional question cannot be decided on the grounds of the sentiments of a section of the people which the legislature might take into consideration while framing the law.

974. Distinction cannot be made between private and public undertaking's workers.

Article 39 of the Directive Principles of State Policy says that the State

are expressly made unenforceable by a Court, cannot override the provisions found in Part III which notwithstanding other provisions, are expressly made enforceable by appropriate writs.

The constitutional validity of a statute depends upon the existence of legislative power. There is no relevancy to make reference to directive principles, in this respect for, the legislative power of a State is only guided by the directive principles of State policy. The directive principles even if disobeyed by the State cannot affect the legislative power of the State as they are only directory in scope and operation : *Deep Chand v State of Uttar Pradesh* A.I.R. 1959 S. C. 648.

979. Concept of minimum wage is in harmony with modern trend.

This concept minimum wage is in harmony with the advance of thought in all civilised countries and approximates to the statutory minimum wage which the State should strive to achieve having regard to the Directive Principle of State Policy contained in part IV of the Constitution : *Express News paper Ltd. v. Union of India*, A.I.R. 1951 S.C. 602 ; 1959 S.C.R. 12.

980. Directive principles not to be enforced at the Expense of minorities.

Directive principles contained in Article 45 requires the State to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years. The argument advanced was that the minorities should not be permitted to stand in the way of the implementation of the sacred duty cast upon the State of giving free and compulsory education to the Children of the country so as to bring them up properly and to make them fit for discharging the duties and responsibilities of good citizens. It was further argued that selfish claims of the minorities would set back the hands of the clock of progress. These minorities should not, be permitted, to perpetuate the sectarian fragmentation of the people and to keep them perpetually segregated in separate and isolated cultural enclaves and thereby retard the unity of the nation. The court observed that it is not for the court to question the wisdom of the Supreme law of the land. The people of India have given unto themselves a Constitution which is not for any particular community or section but for all. Its provisions are intended to protect all minority as well as the majority communities. There can be no manner of doubt that the Constitution has granted certain cherished rights of the minorities concerning, their language, culture and religion. These concessions must have been made to them for good and valid reasons. Article 45, no doubt, requires the State to provide for free and compulsory education for all children, but there is nothing to prevent the State from discharging that solemn obligation through Government and aided schools and Article 45 does not require that obligation is be discharged at the expense of the minority communities : *In re Kerala Education Bill*, A.I.R. 1959 S. C. 985.

in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well being; enough to enable him to qualify to discharge his duties as a citizen."

Article 39 and 43 of the Constitution of India will stand disobeyed if in giving living wage a distinction is sought to be made between workers, of public and private undertakings: *Hindustan Antibiotic v. Workmen*, A. I. R. 1967 S. C. 947 : 1967 1 S. C. W. R. 361.

976. Living wage—meaning of.

It is customary to quote Mr. Justice Higgins of Australia who defined living wage as one appropriate for the normal needs of average employee regarded as a human being living in a civilized community. He explained himself by saying that living wage must provide not merely for absolute essentials such as food, shelter and clothing but for a condition of frugal comfort estimated by current human standards including provision for evil days. It has now been generally accepted that living wage means that every male earner should be able to provide for his family not only the essentials but a fair measure of frugal comfort and an ability to provide for old age or evil days. Fair wage lies between the concept of minimum wage and the concept of living wage. The Constitution by Article 43 has laid down a directive principle that "the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunity."

It may thus be taken that our political aim is living wage though in actual practice living wage has been an ideal which has eluded our efforts like an ever-receding horizon and will so remain for some time to come. Our general wage structure has at best reached the lower levels of fair wage though some employers are paying much higher wages than the general: *R. B. Employes, Assn. v Reserve Bank*, A. I. R. 1966 S. C. 305 : (1965) 2 S. C. A. 733.

977. Wage structure, three categories

In dealing with wage structure, it is usual to divide wages into three broad categories, the basic minimum wage which is the bare subsistence wage; above it is the fair wage beyond the fair wage is the living wage

While dealing with the wage structure there would be no justification for ignoring the idealistic character of the living wage as specified in Article 43 of the Constitution; and so, it would be necessary to enquire whether the wage question satisfies the test laid down by the Royal Commission on the basic wage for the Commonwealth of Australia which has been endorsed by the Fair Wages Committee's Report and broadly approved by the Supreme Court in the *Express News Paper's Case*, 1959 S.C.R. 12. See also *Standard Vacuum Refining Co v Its Workmen*, A. I. R. 1961 S. C. 895.

978. Validity of laws cannot be tested with respect to Directive principle.

In *State of Madras v. Smt. Champakam Dorairajan*, (1951) S.C.R. 525 Das J as he then was said:

"The directive principles of the State policy, which by article 37

Government—Presumption will be that the order is valid

1000. Order under article 166 should be communicated to the person concerned before it can be called as an order of Government
1001. Chief Minister can pass an order regarding a matter falling in the portfolio of some other minister
1002. Rajasthan Rules of Business—Review petition against the order of Governor must be referred to governor in case it is to be rejected
1003. Rajasthan Rules of Business framed under article 166—Order making compulsory retirement not to be put before Governor or Chief Minister if not by way of penalty
1004. Order under article 166 defective—Burden of proof that it was properly passed is on Government
1005. Power to dismiss is outside the scope of Article 154
1006. State executive, How works
1007. Difference between a Minister and Secretary of a department
1008. Minister not part of the department
1009. Executive decision and its formal expression
1010. Article 166, is directory
1011. Expressed to be made—Meaning of
1012. Who should communicate the orders
1013. Power under Article 161 to give pardon and power of Supreme Court under 142 to suspend sentence compared with power of Judicial committee
1014. Appeal pending in Supreme Court, action cannot be taken under article 161
1015. Ex. Maharajas have no power to grant pardon after the coming of Constitution

981. General.

The executive power of the Union has been vested in President and is to be exercised directly or indirectly through him. Article 52 of the Constitution of India says that there shall be a President in India. Article 53 of the Constitution lays down that all the executive business of the Union is to be carried in the name of the President. In this respect our Constitution has adopted the British Constitution. The President is the symbol of the State and of the unity of People. The position of an elective President has been reconciled with an elected Legislature.

982. Executive power, defined.

The executive power of the State is that power which is concerned with the execution of the will of the State or it may be defined as the exercise of authority within the State by which is administered the law, the business of the Government and the maintenance of the security of the State both in its internal and external aspect.

Executive functions are incapable of comprehensive definition, for they

CHAPTER XXV
UNION AND STATE EXECUTIVE
SYNOPSIS
UNION EXECUTIVE

- 981. General
- 982. Executive power, defined
- 983. Executive and other power—Theory of Separation of power does not exist
- 984. Election of President and Vice President can be challenged only in accordance with the statutes
- 985. Word 'Election' used in Article 71 means the whole election
- 986. Executive, Legislative and judicial Function, explained
- 987. President cannot delegate powers which are invested in him as President
- 988. President can delegate only executive Functions under Article 258.
- 989. Validity of orders passed under Article 77 when the validity can be questioned.
- 990. Article 77 would apply to an order passed under article 353

STATE EXECUTIVE

- 991. State Government—Meaning of
- 992. State can invoke inherent power under section 361 Cr. P. C.
- 993. Delegation of power by State Government should be harmonious to the provision of statute
- 994. Rules of Business—Allocation of business can be made in advance
- 995. Order of detention should be in writing, question whether order of its record should comply with article 166, left open
- 996. Advice given by Council of Minister is a protected as privileged
- 997. Executive action under Article 166 to be in the name of the Governor
- 998. Order passed under article 166, when can be challenged
- 999. No allegation that the order is not made by the

1955 (2) S. C. R. 225. The power of the executive is uncurtailed so far it relates to carrying on business or to enter into any trade or business. This has been made clear by the amending Act of 1956 by which article 238 of the Constitution was amended.

983. Executive and other power—Theory of Separation of power does not exist.

The executive powers vest in the President for the Government. But no specific provision exists for the vesting of the judicial or executive power in other bodies. The President of India or the Governor is to act on the advice of Ministers, who are responsible to the Legislature. Thus our Constitution does not recognise the theory of separation of power. Legislative powers can be exercised even by the executive and Judiciary in certain cases. For example, if there is a proclamation of Emergency, the Parliament can provide that the President will exercise the powers of the State Legislature. He can also promulgate ordinances in certain circumstances: *In re-Delhi Laws Act, 1912*, (1931) S.C.R. 747. However, one organ of the Government cannot encroach upon the Constitutional powers of any other organ of the Government. Similarly one organ of the Government cannot delegate its Constitutional functions to any other organ or authority of the Government: *Ram Jaisaya v. State of Punjab*, (1955) S. C. R. 225; *In re-Delhi Laws Act, 1912*, (1931) 2 S. C. R. 741.

984. Election of President and vice President can be challenged only in accordance with the statutes.

It is wrong to say that a person has a right as a citizen to approach the Supreme Court under Article 71 (1) whenever an election has been held in breach of the constitutional provisions. The right of a person to file an application for setting aside the election must be determined by the statute which gives the right and that statute is Act 33 of 1952 passed under Article 71 (3). The petitioner must strictly bring himself within the four corners of that statute and has no rights apart from it: *Dr. N. B. Khare v. Election Commission*, A. I. R. 1958 S. C. 140.

Articles 71 (1) merely prescribes the form in which disputes in connection with the election of the President and Vice-President would be enquired into, it does not prescribe the conditions under which the petitions for setting aside an election could be presented. Under Article 71 (3) it is the Parliament that is authorised to make law for regulating any matter relating to or connected with the election of the President or Vice President and Act 31 of 1952 has been passed by Parliament in accordance with this provision. The right to stand for election and right to move for setting aside an election are not common law rights. They are conferred by statute and can be enforced only in accordance with the conditions laid down therein. It is wrong to say that the Act and the Rules derogate from the jurisdiction of the Supreme Court under Article 71 (1).

985. Word 'Election' used in Article 71 means the whole election.

The well-recognised principles of election law, Indian and English is that elections should not be held up and that the person aggrieved should not be permitted to ventilate his individual interest in derogation of the general interest of the people, which require that election should be gone through according to the time schedule. It is, therefore, in consonance both with the provisions of Article 62 and with good sense to hold that the word "election" used in Article 71, means the entire process of election.

That is what Parliament understood to be the meaning of article 71 is

are merely the residue of the functions of Government after legislative and judicial functions have been taken away. They include in addition to the execution of laws, the maintenance of public order, the management of State property and nationalised industries and services, the direction of foreign policy, the conduct of military operations and the provision or supervision of such services as education public health, transport, etc. .

Executive powers are those powers which are left out after taking out the Judicial and Legislative powers. But this is subject to the provisions of the Constitution or or any other law: *Ram Jawaya v. State of Punjab*, (1955) 2 S. C. R. 225, (236). Any act not assigned to the Judiciary, Public Service Commission, the Legislature or any particular authority by the Constitution is an executive act. Determination of the Government policy, carrying into execution and initiation of legislation, maintenance of law and order, promotion of Social and economic welfare, the direction of foreign policy, the supervision of the general administration of the State alienation of State property, carrying on State trade and business, entering into contracts are all instances of the exercise of executive power: *Ram Jawaya v. State of Punjab* (1955) 2 S. C. R. 228.

Powers of the executive can be exercised although no law has been made for the same. But no expenditure can be incurred without there being a law on the point. Similarly to deprive persons of their property some law must exist. No law, however is needed for the exercise of the executive powers by the State in other cases.

Making of a treaty is an executive action and no law is needed for the purpose but if under it money is to be paid out of the consolidated fund to a foreign power or the treaty affect private rights, law must be made for this purpose.

If Indian territory is to be ceded to some foreign power, law must be made but not so if a foreign territory is acquired by India: *In re Berubari Union* 1960 S. C. R. 250.

If the executive wants to infringe or acquire private rights, a law must be passed for this purpose. Similarly any act prohibited by law cannot be done by the executive in exercise of its executive power.

The Executive function is not confined merely to execution of laws. In the exercise of its executive power the government may do any act which is assigned to any other authority by the Constitution. It should not be, however, contrary to the provision of any law. It should not encroach upon any legal or fundamental rights of the Citizen: *Ram Jawaya v. State of Punjab*, 1955 2 S. C. R. 225; *Jayantilal v. Rana*, A. I. R. 1964 S. C. 648.

Making of a treaty is an executive Act which the Municipal Court cannot question. But if a treaty affects the private rights of a citizen legislation is necessary. The Constitution has to be amended in case the Indian Territory is to be ceded to a foreign State: *Re Berubari Union*, A. I. R. 1960 S. C. 845.

It is not necessary that there should be an Act of legislature before the executive can function. Specific legislation may be necessary if expenditure is to be incurred out of the consolidated funds of India or if there is encroachment on the rights of the citizen: *Ramjawaya v. State of Punjab*,

are quasi-judicial in character. In addition to these quasi-judicial, and quasi-legislative functions the executive has also been empowered by statute to exercise functions which are legislative and judicial in character and in certain instances, powers are exercised which appear to partake at the same moment of legislative, executive and judicial characteristics. In the complexity of problems which modern Governments have to face and the plethora of Parliamentary business to which it inevitably leads it becomes necessary that the executive should often exercise powers of subordinate legislation. It is indeed possible to characterise with precision as to which agency of the State is executive, legislative or judicial but it cannot be predicated that a particular function exercised by any individual agency is necessarily of the character which the agency bears: *Jayanti Lal v. Rana*, A. I. R. 1964 S. C. 648.

987. President cannot delegate powers which are invested in him as President.

Clause 1 of Article 258 enables the President to entrust to the State the functions which are vested in the Union, and which are exercisable by the President on behalf of the Union; it does not authorise the President to entrust to any other person or body the power and functions with which he is by the express provisions of the Constitution as President invested. The power to promulgate Ordinance under Article 123, to suspend the provisions of Articles, 228 to 279 during an emergency, to declare failure of the Constitutional machinery in the States under Article 356, to declare a financial emergency under Article 360, to make rules regulating the recruitment and conditions of the service of persons appointed to posts and services in connection with the affairs of the Union under Article 309 to enumerate a few out of the various powers are not powers of the Union Government, these are powers vested in the President by the Constitution and are incapable of being delegated or entrusted to any other body or authority under Article 258 (1). Those powers cannot be delegated under Article 258 (1) because they are not powers of the Union and not because of their special character. There is a vast array of other powers exercisable by the President to mention only a few; appointment of Judges, Articles 124; appointment of Commission to investigate conditions of backward classes, Article 340; appointment of Special Officer for Schedule Castes and Tribe, Article 338; exercise of his pleasure to terminate employment, Art. 311; declaration that in the interest of the security of the State it is not expedient to give to a public servant sought to be dismissed an opportunity contemplated by Article 311(2); these are executive powers of the President and may not be delegated or entrusted to another body or officer because they do not fall within Article 258: *Jayanti Lal v. F.N. Rama* A.I.R. 1964 S. S. 648.

988. President can delegate only executive functions under Article 258.

The word "functions" in Art 258 (1) is not qualified by the word "executive and therefore it may *prima facie* appear that all kinds of functions, whether legislative or quasi-judicial or executive can be entrusted by the President to the State Government or its officers with its consent. The words following are "in relation to any matter to which the executive power of the Union extends". These words are not merely descriptive. Under Article 73 (1)(a) the executive power of the Union extends to matters with respect to which parliament has power to make laws subject to the provision there to. But to say that the President can ordinarily entrust any kind of

apparent from the Presidential and Vice-Presidential Election Act, 1952 enacted to regulate the procedure. A perusal of these rules will also indicate that "all doubts and disputes arising out of or in connection with the election of a President or Vice-President" should be brought before the Court after the result of the entire election is declared, that is to say, after a candidate is declared to be elected to the office of President or Vice-President.

It was said that if the petitioners are compelled to wait until the entire election process is concluded and to file election petitions, they will have to show that the result of the election has been materially affected as required by Section 18 of the Presidential and Vice-Presidential Election Act, 1952. But the plea of alleged hardship brought about by section 18 cannot alter the true meaning and import of Article 71. Article 71 postulates an election and the words imply "election process culminating in a candidate being declared elected: *Dr. N. B. Khare v. Election Commission*, A. I. R. 1958 S. C. 140

986. Executive, Legislative and Judicial Functions, explained

It is now well settled that functions which do not fall strictly within the field of legislature or judiciary, fall in the residuary class and must be regarded as executive. Executive functions are incapable of comprehensive definition, for they are merely the residue of the functions of government after legislative and judicial functions have been taken away. They include, in addition to the execution of the laws, the maintenance of public order, the management of State property and nationalised industries and services, the direction of foreign policy, the conduct of military operations, and the provision for supervision of such services as education, public health. It is customary to divide functions of Government into three classes, legislative, executive (or administrative) and judicial.

In *Ram Jawaya v. State of Punjab*, 1955-2 S. C. R. 255; in dealing with the question whether publishing, printing and selling of text books for the use of students may be regarded as an executive function of the State Government, Mukherjea C. J. speaking for the Court observed;

"It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away."

It cannot however be assumed that the legislative functions are exclusively performed by the Legislature, executive functions by the executive and judicial functions by the judiciary alone. The Constitution has not made an absolute or rigid division of functions between the three agencies of the State. To the executive, exercise of functions, legislative or judicial are often entrusted. For instance power to frame rules, regulations and notifications which are essentially legislative in character is frequently entrusted to the executive. Similarly judicial authority is also entrusted by legislation to the executive authority: *Harinagar Sugar Mills Ltd. v. Shyamsundar*, 1962 2 S. C. R. 339. In the performance of the executive functions, public authorities issue orders which are not far removed from legislation and make decision affecting the personal and proprietary rights of individuals which

regard to the definition of the State Government in the General Clauses Act and the concluding words 'By order of the Governor of the Bombay', the order was held to be legal: *Major E. G. Barry v. State*, 1962-2 S.C.R. 195.

In *Dattatraya Moteshwar v. State of Bombay*, 1952 S.C.R. an order made under the Preventive Detention Act, 1950 was questioned on the ground that it did not comply with the provisions of Article 166(1) of the Constitution. There the order was made in the name of the Government and was signed by one Kharkar for the Secretary to the Government of Bombay Home Department. Das, J., as he then was after referring to the decision of the Federal Court in *J. K. Gas Plant Manufacturing Company Ltd. v. Emperor*, 1947 F.C.R. 141 : observed at p. 625.

"Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Government. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State. This however, does not vitiate the order itself."

The learned Judge came to the above conclusion on the ground that the provisions of the said article are only directory and not mandatory. This decision was followed by the Supreme Court in *Joseph John v. State of Travancore-Cochin*, 1955-1 SCR 1011 : There the "show cause notice" issued under Article 311 of the Constitution was impugned on the ground that it was contrary to the provisions of Article 166 thereof. The notice was issued on behalf of the Government and was signed by the Chief Secretary to the Government who had under the rules of business framed by the Rajpramukh the charge of the portfolio of "service and appointments" at the Secretariat level in the State. The Supreme Court held that the said notice was issued insubstantial compliance with the directory provisions of Article 166 of the Constitution. The latest decision on the point is that in *Ghaio Mall and Sons v. State of Delhi*, 1959 S.C.R. 1424 There the question was whether the communication issued by the Under Secretary, Finance, Government of Delhi State, had complied with the provisions of Article 166 of the Constitution.

The Supreme held that it did not comply with the provisions of Art. 166 of the Constitution and also found that the said order was not, as a matter of fact, made by the Chief Commissioner. When the decision in *Dattatraya Moteshwar Case*, 1952 S.C.R. 612 was cited the Court observed at p. 1439 ;

"In that case there was ample evidence on the record to prove that a decision had in fact been taken by the appropriate authority and the infirmity in the form of the authentication did not vitiate the order but only meant that the presumption could not be availed of by the State.

The foregoing decisions authoritatively settled the true interpretation of the provisions of Article 166 of the Constitution. Shortly stated, the legal position is this Article 166, (1) is only directory. Though an impugned order was not issued in strict compliance with the provisions of Article 166(1) it can be established by evidence that the order was made by the appropriate authority. If an order is issued in the name of the Governor and is duly authenticated in the manner prescribed, there is an irrebuttable presumption that the order or instrument is made or

989- Validity of orders passed under Article 77, when the validity can be questioned.

Under clause (1) Article 77 all executive actions of the Government of India shall be expressed to be taken in the name of the President, and under clause (2) thereof orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President. Under the General Clauses Act, the expression President means the Central Government. It was said that as the order issuing the sanction was not expressed to be made in the name of the President the sanction was void. This Article and the corresponding Article viz. Article 166 were subject to judicial scrutiny by the Supreme Court. The validity of an order of detention made by the Bombay Government under Section 3 of the Preventive Detention Act, 1950 was considered in *State of Bombay v. Purushottam Jog Naik*, 1952 S. C. R. 674. There in the body of the order "satisfaction was shown to be that of the Government of Bombay, at the instance of the order the Secretary to the Government of Bombay, Home Minister, framed it under the words 'By order of the Governor of Bombay, Home Minister, legislative frame rules, regulations, Governor with in the meaning of Article 166(1) of the Constitution judicial authority accordingly was not protected by clause (1) of the said authority: *Harinagar*, 339. In the performance of the Constitution does not require a magic incantation issue orders which are in a set formula of words. What we have to see is a decision affecting the requirements is there." It was shown that one should look at the substance of the order, the order that was in question in that case, having

993. Delegation of power by State Government should be harmonious to the provisions of statute

Section 40 (2) of the Defence of India Act which gives power to the State Government to delegate its power to any officer or authority subordinate to it, must be read harmoniously with Section 3(2)(15) of the Act. The State Government cannot delegate the power to detain, to any officer who is lower in rank than the District Magistrate. This is clear from rule 30 A which provides for review of detention order. It is made clear in rule 30 A also that the officer shall in no case be lower in rank than a District Magistrate. The effect of these provisions is that the power of detention can either be exercised by the State Government or by its delegate who however can in no case be lower in rank than a District Magistrate: *Ajaib Singh v. Gurcharn Singh*, A. I. R. 1965 S. C. 1619.

994. Rules of Business.—Allocation of business can be made in advance.

It was said that allocation of business by the Rules of business which were enforced by an order of the Governor dated May 1, 1960 would not be of any effect in allocating the subject of Preventive detention arising under the Defence of India Ordinance, the Act and the Rules of 1962 to the Minister and the Governor should have passed the order of detention himself, the suggestion being that there should be special order of allocation. It was held that the allocation of business under Article 166 (2) of the Constitution is not made with reference to particular laws which may be in force at the time allocation is made and that it is made with reference to the three lists of the Seventh Schedule to the Constitution, because the executive power of the Centre and the State together extends to matters with respect to which the Parliament and the Legislature of a State may make laws. Therefore, when allocation of business is made it is made with reference to the three lists in the Seventh Schedule and thus the allocation in the Rules of Business provides for all contingencies which may arise for the exercise of executive power. Such allocation may be made even in advance of legislation made by Parliament to be available whenever Parliament makes legislation conferring power on a State Government with respect to item mentioned in list I of the Seventh Schedule. It is not necessary that there should be allocation made by the Governor under Article 166 (3) regarding power to detain under the Defence of India Ordinance, Act or rules, after they were passed, it will be enough if the allocation of the subject to which the Defence of India Ordinance, Act or Rules refer has been made with reference to the three lists in Seventh Schedule. If such allocation already exists, it may be taken advantage of, if and when laws are passed. Preventive detention is provided for in List I, item 9, for reasons connected with defence, foreign affairs and the security of India and in item 3 of list III for reasons connected with the security of a State the maintenance of public order, or the maintenance of supplies and services essential to the community. The allocation of business made under Article 166 in pursuance of these entries in the three lists in the Seventh Schedule would be available whenever any law relating to these entries is made and power is conferred on the State Government to act under that law. It is wrong to say that fresh allocation should have been made under Article 166 (3) by the Governor after the passing of the Defence of India Ordinance, Act and Rules: *Godavari v. State of Maharashtra*, A. I. R. 1964 S. C. 1128.

executed by the Governor. Any non compliance with the provisions of the said rule does not invalidate the order, but it precludes the drawing of any such irrebutable presumption. This does not prevent any party proving by other evidence that as a matter of fact the order has been made or not made by the appropriate authority. Article 77 which relates to conduct of business of the Government of India is couched in terms similar to those in Article 166 and the same principles must govern the interpretation of this provision.

990. Article 77 would apply to an order passed under article 359.

It is wrong to say that the orders issued by the President by virtue of the power conferred on him by Article 359 (1) is not an executive action of the Government of India and as such Article 77 would not apply. Article 77 (2) which refers to orders and other instruments made and executed in the name of the President is wide enough to include the Presidential order issued under Article 359 of the Constitution; *Ananda v. Chief Secretary Government of Madras*, A. I. R. 1966 S.C. 657.

STATE EXECUTIVE

991. State Government—Meaning of

Under Article 154 of the Constitution the executive power of the State is vested in the Governor and shall be exercised by him either directly or through officers subordinate to him. The expression "State Government" has a meaning assigned to it under the General Clauses Act, 1897 (X of 1897). It means the authority or person authorised at the relevant date to exercise executive government in the State, and after the commencement of the Constitution, it means the Governor of the State. The police department is also a department of the State Government through which the executive power of the State as respect law and order is exercised: *State of U. P. v. Mohd.*, A.I.R. 1934 S.C. 703.

992. State can invoke inherent power under section 561 Cr. P. C.

The State is a juristic person. The Code of Criminal Procedure itself recognises in some of its provisions the rights of the State Government; such as, the right to give sanction and to move the Court for necessary action etc., the State Government being the authority or person authorised to exercise executive Government at the relevant date. Some of these Provisions are contained in Sections 144, (6), 190(3), 196, 196-A 197 etc. of the Code. One outstanding example is furnished by Section 417 of the Code which gives to the State Government a right of appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court. The State Government may invoke the revisional jurisdiction of the High Court under section 439 of the Code though that section is general in its terms and does not specifically mention the State Government. The State Government can make an application under Section 561-A. There is nothing anomalous in the State Government moving the court for redress when it feels aggrieved by remarks made against it. The State Government may make an application to the High Court under section 561-A in the same way as it may direct the Public Prosecutor to present an appeal on its behalf to the High Court under section 417 or may invoke through one of its officers the jurisdiction of the High Court under section 439 of the Code. It is wrong to say the State Government has no locus standi to make the application under section 561-A Cr. P.C.; *State of U.P. v. Mohd.*, A.I.R. 1964 S.C. 703.

to the Council of Ministers. Indeed it is very difficult to imagine how advice thus tendered by the Public Service Commission to the Council of Ministers can be excluded from the protection afforded by Section 123 of the Act. It was argued that before the final order was passed the Council of Ministers had decided to accept the representation made by the civil servant to reinstate him and this was sought to be proved by calling the two original orders. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on until a final decision is reached by them and is communicated to the Rajpranukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent. Until the final order is thus communicated to respondent it would be open to the Council to consider the matter over and over again, and the fact that they reached provisional conclusion on two occasions in the past would not alter the character of the said conclusions. The said conclusions provisional in character, are a part of the proceedings of the Council of Ministers and no more. Similarly the report received by the Council from the Public Service Commission carries on its face the character of a document the disclosure of which would lead to injury of public interest. It falls in that class of document which "on ground of public interest must as a class be withheld from production". The Court observed "the conclusion appears inescapable that the documents in question are protected under Section 123 and if the head of the department does not give permission for their production, the Court cannot compel the Government to produce them." The affidavits made by the Chief Secretary in support of the plea of the claim of privilege satisfied the requirements of law, no comment can be effectively made against them : *State v. S. S. Singh* A. L. R. 1961 S. C. 492.

997. Executive action under Article 166 to be in the name of the Governor.

Under Article 166 of the Constitution all executive action of the Government of a State is to be expressed to be taken in the name of the Governor, and that order made in the name of the Governor are to be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an order which is so authenticated shall not be called in question on the ground that it is not an order made by the Governor : *Chittaleka v. State of Mysore*, A. L. R. 1964 S. C. 1823.

998. Order passed under Article 166, when can be challenged—Provisions of Article 166 are directory.

If the condition laid down in article 166 are complied with, the order cannot be called in question on the ground that it is not an order made by the Governor. The law on the subject is well settled. In *Dattatraya Morshisar v. State of Bombay*, 1952 S. C. R. 612 at P. 625 Das J-as he then was observed.

"Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied

995. Order of detention should be in writing question whether order of its record should comply with article 166, left open

In this case the question whether the order of detention or the record of the decision reached should comply with article 166, of the Constitution was left undecided. Regarding the other matter it was observed. "We are satisfied that the decision to continue the detention of the detenu which it is urged on behalf of the respondent was reached by him under Rule 30 (a) (8) has not been recorded in writing as required by the said Rule and there is no other evidence on record to show that such a decision had then been reached and reduced to writing. It will be recalled that in the present proceedings, it is common ground between the parties that there has to be an order in writing indicating the decision of the appropriate authority reached by him after reviewing the case of the detenu that the continuance of his detention should be ordered. Rule 30 A (8) provides that every detention order made by an officer empowered by the Administrator and confirmed by him under clause (b) of sub-rule (6) and every detention order made by the Administrator himself shall be reviewed at intervals of not more than six months by the Administrator who shall decide upon review whether the order should be continued or cancelled. The question which we are to decide is whether it is shown by the minutes made on that file produced before us by the respondent that he did decide that it was necessary to continue the detention of detenus before us. The minutes made on the file are no doubt a written record of his decision and so the requirement that whatever is decided under Rule 30 A (3) should be reduced to writing is satisfied; but the question is do these minutes show that the cases of the detenus before us were considered and a decision to continue their detention was reached by the respondent on the relevant occasion and that present a very narrow problem for our decision irrelevant to the construction of the said minutes." *Biren Dutt v. Chief Commr of Tripura* A. I. R. 1965 S. C. 596.

996. Advice given by Council of Minister is a protected as privileged.

The orders of the Pepsu Government in the shape of the minutes recorded in the course of Cabinet discussion under Article 163 (3) of the Constitution are protected documents and the question whether any and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court. This is the constitutional protection and the court has no alternative but to sustain the claim of privilege.

The documents in regard to which privilege was claimed were described as original orders passed by the Pepsu Cabinet on the three respective dates. The very description of the document clearly indicates that they are documents relating to the discussion that took place amongst the members of the Council of Ministers and the provisional conclusions reached by them in regard to the respondent's representation from time to time. Without knowing more about the contents of the said documents it is impossible to escape the conclusion that these documents would embody the minutes of the meetings of the Council of ministers and the advice which it ultimately gave to the Rajpramukh. The advice given by the Cabinet to the Rajpramukh or the Governor is expressly saved by article 163, sub-article 3 of the Constitution, of India and in the case of such advice no further question arises. The same is the position in regard to the advice tendered by the Public Service Commission

with the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself."

Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity.

The same view was reiterated by the Supreme Court in *State of Bombay v. Purshottam Jog Naik*, 1952 S. C. R. 674 where it was pointed out that though the order in question was defective in from it was open to the State Government to prove by other means that such an order had been validly made. This view has been reaffirmed by Supreme Court in subsequent decisions in *Ghaio Mall and sons v. State of Delhi* 1959 S. C. R. 1434 and it is, therefore, settled law that provisions of Article 166 of the Constitution are only directory and not mandatory and, if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor: *Chilleraleka v. State*, A. I. R. 1964 S. C. 1823.

999. No allegation that the order is not made by the Government—Presumption will be that the order is valid.

Though the order in question did not conform to the provisions of Article 166 of the Constitution, it *ex facie* said that an order to the effect mentioned therein was issued by the Government. It was not denied that it was so communicated. In neither of the affidavits filed by the appellants there was any specific averment that no such order was issued by the Government. In the counter-affidavit filed by Deputy Secretary to the Government of Mysore, Education Department, there was clear averment that the Government gave the direction contained in the order and a similar letter was issued to the Selection Committee for admission to Medical Colleges and this averment was not denied by the appellants by In these circumstances when there are no allegations at all in the affidavit that the order was not made by the Government, there is no reason to reject the averment made by the Deputy Secretary to the Government: *Chilraleka v. State of Mysore*, A. I. R. 1964 S. C. 1823.

1000. Order under Article 166 should be communicated to the person concerned before it can be called an order of Government.

The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore requires, that the action must be taken by the authority concerned in the name of the Governor or Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State. Constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers.

Therefore, whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular state a Minister of the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the 'order' of the State Government? Therefore to make the opinion about to a decision of the Government it must be

orders are issued.—

"Proposals for dismissing, removing or compulsory retiring of any officer where the appointing authority is the Government."

It was held that where the order of compulsory retirement is by way of punishment, the compliance of the above rule is necessary. There is no doubt that the words "Proposals for compulsory retiring of any officer where the appointing authority is the Government" appearing in Rule 31(viii) are general and are not qualified by the words "as penalty" and may be open to the interpretation that all kinds of compulsory retirement must be referred to the Governor. But reading these words in the collocation in which they appear, these were construed to mean compulsory retirement as a penalty. The words "compulsory retiring of any officer" follow the words "dismissing and removing". Now dismissing and removing are penalties provided by Rule 14 of the Classification Rules and, therefore, in the collocation in which the words "compulsory retiring" appear in the Rule they must be read as a penalty like dismissing and removing.

All compulsory retirement is not punishment is further made clear by Explanation (vi) to Rule 14 of the Classification Rules, which provides that "compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement" is not a penalty. Rule 56 of the Service Rules is a rule relating to superannuation and Rule 224 (2) of the Service Rules is a rule relating to the retirement and both of them do not amount to penalties in view of this Explanation. The Rules of business when they speak of compulsory retiring of an officer speaks of compulsory retirement as a penalty and not compulsory retirement at reaching the age of superannuation or under Rule 524 (2); It is therefore not necessary to submit the papers with respect to compulsory retirement to Governor : *State of Rajasthan v. Sripal Jain*, A. I. R. 1963 S. C. 1323.

1004. Order under article 166 defective—Burden of proof that it was properly passed is on Government

It is well settled that any defect of form in the order would not necessarily make it illegal and the only consequence of the order not being in proper form as required by Article 166 is that the burden is thrown on the Government to show that the order was in fact passed by it. Where it was stated on behalf of the government that the order in question was communicated by the Inspector General of Police on the direction of the Government it was held to be legal. It was observed "that the order does not say in the active voice that the Inspector General of Police ordered the retirement of the Officers mentioned, therein, though the impression that a person will get from it certainly is that the order of retirement was being passed by the Inspector General of Police. Therefore, the burden was thrown because of this defect in the form of the order on the appellants to show that the order was passed by the Government. That has in our opinion been shown by the production of paper from the relevant file by the appellants. That shows that the recommendation of the high-powered Committee was approved by the Home Minister and the Chief Minister and the order of compulsory retirement was thus passed by the Government of Rajasthan." : *State of Rajasthan v. Sripal Jain* A. I. R. 1963 S.C. 1323.

1005. Power to dismiss is outside the scope of article 154.

In India every person who is a member of a Public Service disci-

and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not under Section 11 (1) of the Act: *Dallara v. State*, A. I. R. 1952 S. C. 181

1011. Expressed to be made, meaning of

One of the meanings of "expressed" is to make known the opinions or the feelings of a particular person. When a secretary to Government apprehends a man and tells him in the order that this is being done under the orders of the Governor, he is in substance saying that he is acting in the name of the Governor and, on his behalf, and is making known to the detainee the opinion and feelings and orders of the Governor. The Constitution does not require a magic incantation which can only be expressed in a set formula of words. What is to be seen is whether the substance of the requirements has been fulfilled or not: *State of Bombay v. Purshottam Jog*, A. I. R. 1952 S. C. 317.

1012. Who should communicate the orders.

Under Section 3 of the Preventive Detention Act, 1950 the authority to make the order is the State Government. Article 166 (1) of the Constitution provides that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. The orders of detention expressly stated that the Governor of Punjab was satisfied of necessity of the order and that they were made by his order. The orders were however, signed by the Home Secretary. This was held to be legal. The communication of the grounds need not be made directly by the authority making the order. The communication may be through recognized channels prescribed by the administrative rules of business: *Ujagar Singh v. State*, A. I. R. 1950 S. C. 350.

1013. Power under Article 161 to give pardon and power of Supreme Court under 142 to suspend sentence compared with the power of Judicial Committee.

The Supreme Court has the power to suspend sentence or grant bail pending hearing of the special leave petition and its wrong to say that it does not affect the power of the executive to grant a pardon, using the terms in its comprehensive sense. The position in England is different. There in *Balmukand v. King Emperor*, 42 Ind.App. 133 (where a convicted person moved His Majesty in council for special leave to appeal and the question arose as to the power of the executive to suspend the sentence), Lord Haldane, L. C. made the following observation:—

'With regard to staying execution of the sentence of death, their Lordships are unable to interfere. As they have often said this Board is not a Court of Criminal Appeal. The tendering of advice to His Majesty as to the exercise of his prerogative of pardon is a matter for the Executive Government; and is outside their Lordships' Province. It is of course, open to the Petitioner's advisers to notify the Government of India that an appeal to this Board is pending. The Government of India will no doubt give due weight to the fact and consi-

1008. Minister not part of the department.

It is wrong to say that the Minister is part of the department constituted as statutory undertaking under an Act: *Nageshwar Rao v. A. P. R. T. C.*, A. I. R. 1959 S. C. 1376.

1009. Executive decision and its formal expression.

The Preventive Detention Act contemplates and requires the taking of an executive decision either for confirming the detention order under Section 11 (1) or for working or modifying the detention order under Section 13. But the Act is silent as to the form in which the executive decision or action whether it is described as an order or as executive action, is to be taken. No particular form is prescribed by the Act at all and the requirements of the Act will be fully satisfied if it can be shown that the executive decision has in fact been taken. According to Article 166 of the Constitution all executive action of the Government of a State must be expressed and authenticated in the manner therein provided. But there is a distinction between the taking of an executive decision and giving formal expression to the decision so taken. Usually executive decision is taken on the office files by way of notes or endorsements made by appropriate Minister or officer. If every executive decision has to be given a formal expression the whole Government machinery, will be brought to a stand still.

Every executive decision need not be formally expressed and this is particularly true when one superior officer directs his subordinate to act or forbear from acting in a particular way, but when the executive decision affects an outsider or is required to be officially notified or to be communicated it should normally be expressed in the form mentioned in Article 163 (1) i. e. in the name of the Governor: *Dattatrya v. State of Bombay*, A. I. R. 1952 S. C. 181.

1010. Article 166, is directory.

An omission to make and authenticate an executive decision in the form mentioned in Article 166 does not make the decision itself illegal, for the provisions of that Article like their counterpart in the Government of India Act, are merely directory and not mandatory.

It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.

Strict compliance with requirements of Article 166 gives an immunity to the order to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself. The position, therefore, is that while the Preventive Detention Act requires an executive action, for the confirmation of an order under Section 11 (1) that Act does not itself prescribe any particular form of expression of that executive decision. Article 166 directs all executive action to be expressed

construction should be followed. Again the field in which the power is being exercised is also the same, namely, the suspension of the sentence passed upon a convicted person. There can therefore be no doubt that the judicial power under Article 142 and the Executive power under Article 161 can within certain narrow limits be exercised in the same field. The question that immediately arises is of harmonious construction as one power is not made subject to the other by specific words in the Constitution itself. Neither Article 161 contains any words of limitation nor Article 142 contains any words of limitation. But if there is [any field which is common to both the principle of harmonious construction will have to be adopted in order to avoid conflict between the two powers. It will be seen that the ambit of Art. 161 is very much wider and it is only in a very narrow field that the power contained in Article 161 is also contained in Article 142 namely the power of suspension of sentence during the period when the matter is sub judice in the Court. Therefore on the principle of harmonious construction and to avoid a conflict between the two powers it must be held that Article 161 does not deal with the suspension of sentence during the time Article 142 is in operation and the matter is sub judice in the Court. *K M Nanawati v State* A I R 1961 S C 112.

1015 Ex Maharajas have no power to grant pardon after the enforcement of Constitution

Article 72 provides for the power of the President and Article 161 for the power of the Governor to give pardon in criminal cases. Article 238 (1) taken with Article 161 provided for this power to the Raj Pramukh of a part B State. In the light of these provisions the continuance of the prerogative of the Maharaja of Cochin relating to the execution of the death sentences with reference to the ex State of Cochin would be inconsistent with the new Constitution. Such power, therefore, must be taken to have been superseded and abrogated as being inconsistent with the Constitution. *Kunjumam v State*, A I R 1956 S C. 143.

der the circumstances. But their Lordships do not think it right to express any opinion as to whether the sentence ought to be suspended."

These observations were made because the Judicial Committee of the Privy Council, unlike Supreme Court, was not a Court of Criminal appeal and therefore the question of suspending the operation of the sentence of death was not within their judicial purview. The granting of special leave by the Privy Council was an example of the residuary power of the Sovereign to exercise his judicial functions by way of his prerogative and, therefore, the petitioner was left free in that case to approach the Government of India, as the delegate of the Sovereign, to exercise the prerogative power in view of the circumstances that an appeal to the Privy Council was intended.

It is noteworthy that the reprieve granted in that case covered only the period until the grant or refusal of the petition for leave to appeal and did not go further so as to cover the period of pendency of the appeal to the Privy Council: *K. M. Nanavati v. State*, A. I. R. 1961 S. C. 112.

1014. Appeal pending in Supreme Court - Action cannot be taken under Article 161.

The power can now be exercised by Supreme Court under Article 138 in respect of "any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. This wide and comprehensive power in respect of any determination by any court or tribunal must carry with it the power to pass orders incidental or ancillary to the exercise of that power. Vide powers have been given to the Supreme Court under Article 145 to make such order as is necessary for doing complete justice in any cause or matter pending, before it.

The power of the Supreme Court to pass an order of suspension of sentence or to grant bail pending the disposal of the application for special leave to appeal is implied in view the very wide terms in which Article 142 is worded. When an application for special leave to appeal from a judgment and order of conviction and sentence passed by a High Court is made, the Supreme Court has been issuing orders of interim bail pending the bearing and disposal of the application for special leave as also during the pendency of the appeal to the Supreme Court after special leave has been granted. It is wrong to say that the pendency of a special leave application in the Supreme Court makes no difference to the exercise of the power by the executive under Article 161, especially when both the organs have to function in the same field at the same time. It is wrong to assume that there could never be a conflict between the exercise of the power by the Governor under Article 161 and by the Supreme Court under Article 142 because the power under Article 162 is executive power and the power under Article 142 is judicial power and the two do not act in the same field.

It is true that the power under Art. 161 is exercised by the executive while the power under Art. 142 is that of the judiciary; but merely because one power is executive and the other is judicial, it does not follow that they can never be exercised in the same field. The field in which the power is exercised does not depend upon the authority exercising the power but upon the subject-matter. Where the power is being exercised by the executive to suspend the sentence and where that power can also be exercised by the Supreme Court under Article 142 the principle of harmonious

construction should be followed. Again the field in which the power is being exercised is also the same namely the suspension of the sentence passed upon a convicted person. There can therefore be no doubt that the judicial power under Article 142 and the Executive power under Article 161 can within certain narrow limits be exercised in the same field. The question that immediately arises is of harmonious construction as one power is not made subject to the other by specific words in the Constitution itself. Neither Article 161 contains any words of limitation nor Article 142 contains any words of limitation. But if there is any field which is common to both the principle of harmonious construction will have to be adopted in order to avoid conflict between the two powers. It will be seen that the ambit of Art. 161 is very much wider and it is only in a very narrow field that the power contained in Article 161 is also contained in Article 142 namely the power of suspension of sentence during the period when the matter is sub judice in the Court. Therefore on the principle of harmonious construction and to avoid a conflict between the two powers it must be held that Article 161 does not deal with the suspension of sentence during the time Article 142 is in operation and the matter is sub judice in the Court. *K. M. Nanavati v. State* A I R 1951 S C. 112.

1015 Ex. Maharajas have no power to grant pardon after the enforcement of Constitution.

Article 72 provides for the power of the President and Article 161 for the power of the Governor to give pardon in criminal cases. Article 238 (1) taken with Article 161 provided for this power to the Raj Pramukh of a part B State. In the light of these provisions the continuance of the prerogative of the Maharaja of Cochin relating to the execution of the death sentences with reference to the ex State of Cochin would be inconsistent with the new Constitution. Such power therefore must be taken to have been superseded and abrogated as being inconsistent with the Constitution. *Kutub-ur-Raja v. State* A I R 1956 S C. 143.

der the circumstances. But their Lordships do not think it right to express any opinion as to whether the sentence ought to be suspended."

These observations were made because the Judicial Committee of the Privy Council, unlike Supreme Court, was not a Court of Criminal appeal and therefore the question of suspending the operation of the sentence of death was not within their judicial purview. The granting of special leave by the Privy Council was an example of the residuary power of the Sovereign to exercise his judicial functions by way of his prerogative and, therefore, the petitioner was left free in that case to approach the Government of India, as the delegate of the Sovereign, to exercise the prerogative power in view of the circumstances that an appeal to the Privy Council was intended.

It is noteworthy that the reprieve granted in that case covered only the period until the grant or refusal of the petition for leave to appeal and did not go further so as to cover the period of pendency of the appeal to the Privy Council; *K. M. Nanavati v. State*, A. I. R. 1961 S. C. 112.

1014. Appeal pending in Supreme Court - Action cannot be taken under Article 161.

The power can now be exercised by Supreme Court under Article 136 in respect of "any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. This wide and comprehensive power in respect of any determination by any court or tribunal must carry with it the power to pass orders incidental or ancillary to the exercise of that power. Vide powers have been given to the Supreme Court under Article 145 to make such order as is necessary for doing complete justice in any cause or matter pending, before it.

The power of the Supreme Court to pass an order of suspension of sentence or to grant bail pending the disposal of the application for special leave to appeal is implied in view the very wide terms in which Article 142 is worded. When an application for special leave to appeal from a judgment and order of conviction and sentence passed by a High Court is made, the Supreme Court has been issuing orders of interim bail pending the hearing and disposal of the application for special leave as also during the pendency of the appeal to the Supreme Court after special leave has been granted. It is wrong to say that the pendency of a special leave application in the Supreme Court makes no difference to the exercise of the power by the executive under Article 161, especially when both the organs have to function in the same field at the same time. It is wrong to assume that there could never be a conflict between the exercise of the power by the Governor under Article 161 and by the Supreme Court under Article 142 because the power under Article 162 is executive power and the power under Article 142 is judicial power and the two do not act in the same field.

It is true that the power under Art. 161 is exercised by the executive while the power under Art. 142 is that of the judiciary; but merely because one power is executive and the other is judicial, it does not follow that they can never be exercised in the same field. The field in which the power is exercised does not depend upon the authority exercising the power but upon the subject-matter. Where the power is being exercised by the executive to suspend the sentence and where that power can also be exercised by the Supreme Court under Article 142 the principle of harmonious

construction should be followed. Again the field in which the power is being exercised is also the same, namely the suspension of the sentence passed upon a convicted person. There can therefore be no doubt that the judicial power under Article 142 and the Executive power under Article 161 can within certain narrow limits be exercised in the same field. The question that immediately arises is of harmonious construction as one power is not made subject to the other by specific words in the Constitution itself. Neither Article 161 contains any words of limitation nor Article 142 contains any words of limitation. But if there is any field which is common to both the principle of harmonious construction will have to be adopted in order to avoid conflict between the two powers. It will be seen that the ambit of Art. 161 is very much wider and it is only in a very narrow field that the power contained in Article 161 is also contained in Article 142 namely the power of suspension of sentence during the period when the matter is sub judice in the Court. Therefore on the principle of harmonious construction and to avoid a conflict between the two powers it must be held that Article 161 does not deal with the suspension of sentence during the time Article 142 is in operation and the matter is sub judice in the Court. *K M Nanawati v State* A I R. 1951 S C. 112.

1015 Ex Maharajas have no power to grant pardon after the enforcement of Constitution

Article 72 provides for the power of the President and Article 161 for the power of the Governor to give pardon in criminal cases. Article 238 (1) taken with Article 161 provided for this power to the Raj Pramukh of a part B State. In the light of these provisions the continuance of the prerogative of the Maharaja of Cochin relating to the execution of the death sentences with reference to the ex State of Cochin would be inconsistent with the new Constitution. Such power therefore, must be taken to have been superseded and abrogated as being inconsistent with the Constitution. *Kunjuram v State*, A I R 1956 S C 143.

CHAPTER XXVI
UNION AND STATE LEGISLATURES
SYNOPSIS

- 1016. General
- 1017. Union Legislature
- 1018. State Legislatures
- 1019. Scope of Articles 105 and 194
- 1020. Article 19 (1)(a) does not govern the Freedom of speech of Legislators
- 1021. Freedom of speech is absolute and unfettered
- 1022. Powers and privileges of Legislatures are the same as these are of House of Commons
- 1023. Power and privileges of House of Commons should subsist on 26th January 1950 and should be so recognised by English Courts
- 1024. Rules made by Legislature are subject to Part III
- 1025. Law prescribing powers and privileges if subject to Article 13
- 1026. Power to prohibit publication of inaccurate report
- 1027. Parliamentary privilege, Defined
- 1028. Freedom of press does not confer on it the right to commit breach of the privileges of the House
- 1029. Law made under Article 194(3) is subject to Article 13 (2)
- 1030. Legislatures not Court of record
- 1031. Judge of High Court entertaining petition challenging an order of Legislature imposing penalty, no contempt of House
- 1032. Contempt of House, penalty to be imposed after hearing the parties
- 1033. Right of an advocate to assist the client is uncontrolled by Article 194
- 1034. Article 19 (1) must yield to Article 190
- 1035. Deprivation of personal liberty under Article 195 is unconstitutional
- 1036. Court cannot regulate the procedure of House
- 1037. At any time—Rule 21 —Meaning of
- 1038. Effect of expunging the remark

- 1039 Court not to judge whether contempt is committed or not
- 1040 Right to move Court in case of violation of articles 20 and 21 not barred
- 1041 Allegation of malafides in privilege proceedings
- 1042. Power to punish for contempt should be exercised carefully
- 1043 Dissolution and Prorogation English practice cannot be availed in India
- 1044 Power to issue general warrant
- 1045 Prorogation and Dissolution under India Constitution does not dissolve upper house
- 1046 Bill pending when lapses on prorogation
- 1047 Scope of Article 196 Clause 5—Bills do not lapse if assent of President or Governor is not given
- 1048 President or Governor not bound to give assent within any specified time
- 1049 Bill sent back with a message by President or Governor can be considered by new house
- 1050 Bill pending in council but not passed by Assembly does not lapse
- 1051 *Money bill, Municipal Taxation does not fall within the term*
- 1052 Office of profit How established
- 1053 Irregularity in procedure of legislature effect
- 1054 Disqualification incurred before election not covered by article 191
- 1055 Scope of power of Election Commission under article 192
- 1056 Who can raise the question of disqualification
- 1057 Modification under Article 370 extent of power of President
- 1058 Filling the seats meaning of

1016 General

In the parliamentary system of government as it exists in England there is a blending of the legislative and executive functions in the hands of the executive organs and, on the other hand the legislature has supreme power to determine its own powers and those of other organs of Government. But in India though we have adopted English pattern the powers of the three organs have been specified *In re Delhi Laws Act 1912* 1951 S C R 747

1017 Union Legislature

The relevant articles which deal with the Constitution powers and functions of the Union legislature are contained in Articles 79 to 123 of the Constitution. The Union legislature consists of House of the People and the Council of States. The powers and privileges of these houses as interpreted by Supreme Court are given in following paras. It may be seen that the most of the provisions relating to Union and State legislatures are worded in same language and therefore the interpretation given by Supreme Court regarding one will invariably govern the other.

1018 State Legislatures

The relevant Articles which deal with the composition of State legislatures are Articles 168 to 212 of the Constitution. The States of Andhra Pradesh, Bihar, Madhya Pradesh, Madras, Maharashtra, Mysore, Punjab, Uttar Pradesh and West Bengal have two houses known as Legislative Assemblies and Legislative Council. The rest of States have one Chamber known as Legislative Assemblies.

1019. Scope of Articles 105 and 194.

The subject-matter of each of the four clauses of Article 194 is different. Clause (1) confers on the members freedom of speech in the Legislature, subject, of course, to certain provisions therein referred to. Clause (2) gives immunity to the members or any person authorised by the House to publish any report etc. from legal proceedings. Clause (3) confers certain powers, privileges and immunities on the House of the Legislature of a State and on the members and the committees thereof and finally clause (4) extends to the members and the committees thereof who are not members of the House, but who, by virtue of the Constitution, have the right to speak and to otherwise take part in the proceedings of the House or any committee thereof. In the second place the fact that cl. (1) has been expressly made subject to the provisions of the Constitution but clauses (2) to (4) have not been stated to be so subject indicates that the Constitution makers did not intend clauses (2) to (4) to be subject to the provisions of the Constitution. If the Constitution makers wanted that the provisions of all the clauses should be subject to the provisions of the Constitution, then the Article would have been drafted in a different way, namely, it would have started with the words: "subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of the Legislature" and then the subject-matter of the four clauses would have been set out as sub-clause (i), (ii), (iii) and (iv), : so as to indicate that the over-riding provisions of the opening words qualified each of the sub-clauses. In the third place, it may well be said that the words "regulating the procedure of the Legislature" occurring in cl. (1) of Art. 194 should be read as governing both "the provisions of the Constitution" and "the rules and standing orders." So read freedom of speech in the Legislature becomes subject to the provisions of the Constitution regulating the procedure of the Legislature, that is to say, subject to the Articles relating to procedure in Part VI including Articles 208 and 211, just as freedom of speech in Parliament under Art. 105 (f), on a similar construction, will become subject to the Articles relating to procedure in Part V including Articles 117 and 121. The right conferred on a citizen under Article 19 (1) (a) can be restricted by law which falls within cl. (2) of that Article and he may be made liable in Court of law for breach of such law, but cl. (2) of Art. 194 categorically lays down that no member of the Legislature is to be made liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or in committees thereof and that no person will be liable in respect of the publication by or under the authority of the House of such Legislature of any report, paper or proceedings. The provisions of cl. (2) of Art. 194, therefore indicate that the freedom of speech referred to in cl. (1) is different from the freedom of speech and expression guaranteed under Art. 19 (1) (a) and cannot be cut down in any way by any law contemplated by cl. (2) of Art. 19 : *M. S. M. Sharma v. Sri Krishan Sinha*, A. I. R. 1959 S. C. 395; *In re-Article 143 of the Constitution of India*, A. I. R. 1965 S. C. 745.

120 Article 19(1)(a) does not govern the freedom of speech of Legislators

Clause (1) of Article 194 of the Constitution of India makes it clear that the freedom of speech in the Legislature of every State which it prescribes, is subject to the provisions of the Constitution and to the rules and standing orders, regulating the procedure of the Legislature. While interpreting the clause, it is necessary to emphasise that the provision of the Constitution subject to which freedom of speech has been

conferred on the legislature, are not the general provisions of the Constitution but only such of them as relate to the regulation of the procedure of the Legislature. The rules and standing orders may regulate the procedure of the Legislature and some of the provisions of the Constitution may also purport to regulate it, for instance, Articles 208 and 211. The adjectival clause 'regulating the procedure of the Legislature' governs both the preceding clauses relating to the provision of the Constitution and the rules and standing orders. Therefore, clause (1) of Article 194 confers on the legislators specifically the right of freedom of speech subject to the limitation prescribed by its first part. It would thus appear that by making this clause subject only to the specified provisions of the Constitution, the Constitution makers wanted to make it clear that they thought it necessary to confer on the legislators freedom of speech separately and in a sense, independently of Article 19(1)(a). If all that the legislators were entitled to claim was the freedom of speech and expression enshrined in Article 19(1)(a) it would have been unnecessary to confer the same right specifically in the manner adopted by Article 194(1) and so, it would be legitimate to conclude that Article 19(1)(a) is not one of the provisions of the Constitution which controls the first part of clause (1) of Article 194 : *In re Article 143 of Constitution of India*, A. I. R. 1963 S. C. 745.

1021 Freedom of Speech is absolute and unfettered.

Clause 1 of Article 194 having conferred freedom of speech on the legislature, clause 2 emphasises the fact that the said freedom is intended to be absolute and unfettered. In other words, even if a legislator exercises his right of freedom of speech in violation, say, of Article 211, he would not be liable for any action in any Court. Similarly, if the legislator by his speech or vote, is alleged to have violated any of the fundamental right guaranteed by Part III of the Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any Court. If the impugned speech amounts to libel or becomes actionable or indictable under any other provision of the law, immunity has been conferred on him from any action in any Court by this clause. He may be answerable to the House for such a speech and the Speaker may take appropriate action against him in respect of it; but no other action can be taken. It is very clear that the Constitution makers attached so much importance to the necessity of absolute freedom in debates within the Legislative Chambers that they thought necessary to confer complete immunity on the Legislators from any action in any Court in respect of their speeches in the Legislative Chambers in the wide forms prescribed by clause (2). Thus, clause (1) confers freedom of speech on the legislators within the Legislative Chamber and clause, (2) makes it plain that the freedom is literally absolute and unfettered : *In re Article 143, Constitution of India* A. I. R. 1963 S. C. 645.

1022 Powers and privileges of legislatures are the same as these are of House of Commons.

Clause 3 of Article 194 empowers the Legislatures of States to make laws prescribing their powers, privileges and immunities which the house of Commons enjoyed at the commencement of the Constitution. The makers of Constitution must have thought that the Legislatures will take some time to make laws in respect of their powers, privileges and immunities. During the interval, it was thought necessary to confer on them the necessary powers, privileges and immunities. There can be little doubt that the

powers, privileges and immunities which are contemplated by clause (3) are incidental powers, privileges and immunities which every Legislature must possess in order that it may be able to function effectively: *In re Article 143, Constitution of India*, A. I. R. 1965 S. C. 745.

1023. Power and privileges of House of Commons should subsist on 26th January 1950 and it should be recognised by English Courts.

Clause 3 of Article 194 requires that the powers, privileges and immunities which are claimed by the Legislature must be shown to have subsisted at the commencement of the Constitution, i. e. on 26th January, 1950. It is well-known that large number of privileges and powers, the House of Commons claimed during the days of its bitter struggle for recognition, and it is therefore necessary to enquire whether it was an existing power at the relevant time. It must also appear that the said power was not only claimed by the House of Commons, but was recognised by the English Courts. It would obviously be anomalous to say that if a particular power which is claimed by the House of Commons but was not recognised by the English Courts it would still be upheld under the latter part of clause (3) of Article 194 only on the ground that it was in fact claimed by the House of Commons. In other words, the enquiry which is prescribed by this clause is, is the power in question shown or proved to have subsisted in the House of Commons at the relevant time? If the answer is in the affirmative, the privilege can be claimed under Article 194 (3) also. *In re Article 143, Constitution of India*, A.I.R. 1965 S. C. 745.

1024. Rules made by legislature are subject to Part III

Article 208 provides that a House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business. This provision makes it perfectly clear that if the House were to make any rules as prescribed, by it, those rules would be subject to the fundamental rights guaranteed by Part III. In other words, where the House makes rules for exercising its powers under the latter part of Articles 194 (3), these rules must be subject to the fundamental rights of the citizens: *In re Article 143, Constitution of India* A. I. R. 1965 S. C. 745

1025. Law prescribing powers and privileges, if subject to Article 13.

The question which arose was if the Legislature of a State makes a law which prescribes its powers, privileges and immunities, would this law be subject to Article 13 or not? Article 13 provides that laws inconsistent with or in derogation of the fundamental rights would be void. Clause (1) of Article 13 refers in that connection to the laws in force in the territory of India immediately before the commencement of the Constitution, and clause (2) refers to laws that the State shall make in future. *Prima facie*, if the legislature of a State were to make a law in pursuance of the authority conferred on it by clause 3, it would be law within the meaning of Article 13 and clause 2 of Article 13 would render it void if it contravenes or abridges the fundamental rights guaranteed by Part III. That is the effect of the decision of the Supreme Court in *Sharma's case*, (1959) Supp (1) S. C. R. 806. It must now be taken as settled that if a law is made under the purported exercise of the power conferred by the first part of clause 3 it will have to satisfy the test prescribed by the fundamental rights guaranteed by the Constitution. If that be so, it be-

comes, at once material to enquire whether the Constitution makers had really intended that the limitations prescribed by the fundamental rights subject to which alone a law can be made by the Legislature of a State prescribing its powers, privileges and immunities, should be treated as irrelevant in construing the latter part of the said clause. The same point may conveniently be put in another form. If it appears that any of the powers, privileges and immunities claimed by the House are inconsistent with the fundamental rights guaranteed by the Constitution, how is the conflict going to be resolved. Was it the intention of the Constitution to place the powers, privileges and immunities specified in the latter part of clause 3 on a much higher pedestal than the law which the legislature of a State may make in that behalf on a future date? As a matter of construction of clause 3, the fact that the first part of the said clause refers to future laws which would be subject to fundamental rights, may assume significance in interpreting the latter part of clause 3.

It would thus be seen that in the case of *Sharma* (1959) Supp (1) S.C.R. 806; the petitioner did not raise a general issue as to the relevance of all the fundamental rights guaranteed by Part III at all. The contravention of only two articles was placed and they were Articles 19 (1) (a) and 21. It was, therefore, unnecessary to consider the larger issue as to whether the latter part of Articles 194(3) was subject to the fundamental rights in general. It would not be right to read the majority decision as laying down a general proposition that whenever there is a conflict between the provision of the latter part of Article 194 (3) and any of the fundamental rights guaranteed by Part III, the latter must always yield to the former.

The majority decision in *Sharma's Case*, (Supra) said that if a law were passed by the legislature of a State prescribing its powers, privileges and immunities as authorised by the first part of Article 194(3), it would be subject to Article 13. It is wrong to assume that the power conferred on the legislatures by the first part of Article 194 (3) is a Constitutional Power, and so if a law is passed in exercise of the said power, it will be outside the scope of Article 13. It is true that the power to make such a law has been conferred on the Legislatures by the first part of Article 194 (3). but when the State Legislature purport to exercise this power, they will undoubtedly be acting under Article 246 read with Entry 39 of List II. The enactment of such a law cannot be said to be in exercise of constituent power, and so, such a law will have to be treated as a law within the meaning of Article 13. This view which the majority decision expressed in the case of *Sharma*, (1959) Supp (1) S.C.R. 806 was endorsed in *re Articles 112, Constitution of India*, A.I.R. 1965 S.C. 745.

1026. Power to prohibit publication of inaccurate report.

The House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that take place within the House. A fortiori the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate version of such debates or proceedings. The latter part of Art. 194 (3) confers all these powers, privileges and immunities on the Houses of the Legislature of the States, as

Art. 105 (3) does on the Houses of Parliament. It was said that the conditions that prevailed in the dark days of British history, which led to the Houses of Parliament to claim their powers, privileges and immunities, do not now prevail either in the United Kingdom or in our country and that there is, therefore, no reason why we should adopt them in these democratic days. Our Constitution clearly provides that until Parliament or the State Legislature, as the case may be makes a law defining the powers, privileges and immunities of the House, its members and Committees, they shall have all the powers, privileges and immunities of the House of Commons as at the date of the commencement of our Constitution and yet to deny them those powers, privileges and immunities, after finding that the House of Commons had them at the relevant time, will be not to interpret the Constitution but to re-make it: *M. S. M. Sharma v. Sri Krishna Sinha*, A.I.R. 1959, S.C. 398.

However Subba Rao J. as he then was who gave minority judgment in *M. S. M. Sharma v. Sri Krishna Sinha*, A. I. R. 1959 S. C. 395 observed as follows.

"I cannot appreciate the argument that article 194 should be preferred to Article 19 (1), and not vice versa. Under the Constitution, it is the duty of this Court to give a harmonious construction to both the provisions so that full effect may be given to both, without the one excluding the other. There is no inherent inconsistency between the two provisions. Article 19 (1) (a) gives freedom of speech and expression to citizen, while the second part of Article 194 (3) deals with the powers, privileges and immunities of the Legislature and of its members and committees. The Legislature and its members have certainly a wide range of powers and privileges and the said privileges can be exercised without infringing the rights of a citizen, and particularly of one who is not a member of the Legislature. When there is a conflict, the privilege should yield to the extent it affects the fundamental right. This construction gives full effect to both the Articles. This Court in *G. K. Reddy v. Nageswari Hasan*, A. I. R. 1954 S. C. 636 held that the order of arrest of M. Mistry and his detention in the Speaker's custody was a breach of the provisions of Article 22 (2) of the Constitution. In that case the said Mistry was directed by the speaker of the U. P. Legislative Assembly to be arrested and produced before him to answer a charge of breach of privilege. Though the question was not elaborately considered, five Judges of this Court unanimously held that the arrest was a clear breach of the provisions of Article 22 (2) of the Constitution indicating thereby that Article 194 was subject to Articles of Part III of the Constitution. I am bound by the decision of this Court. In the result, I hold that the petitioner has the fundamental right to publish the report of the proceedings of the Legislature and that, as no reasonable restrictions were imposed by law on the said fundamental right, the action of the respondents infringes his right entitling him to the relief asked for."

1027. Parliamentary privilege, Defined.

Parliamentary privilege is defined as "the sum of the peculiar rights enjoyed by each House collectively as a Constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals." *Sir Thomas Erskine May's Parliamentary Practice*, 16th Edn. Ch. III, p. 42.

According to the same author "privilege though part of the law, is to a certain extent an exemption from the ordinary law". The privileges of Parliament are of two kinds, namely, (i) those which are common to both

Houses and (ii) those which are peculiar either to the House of Lords or to the House of Commons. Halsbury's Laws of England, 2nd Edn; Vol. 24, Art: 698, p. 346. The privileges of the Commons, as distinct from the Lords, have been defined as "the sum of the fundamental rights of the House and its individual members" as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords". Redlich and Illbert on Procedure of the House of Commons, Vol. 1, p. 463. These authorities were referred to in the case of *M.S.M. Sharma v. Sri Krishna Sinha*, A. I. R. 1959. S. C. 395.

1028. Freedom of press does not confer on it the right to commit breach of the privileges of the House.

It will be noticed that Article 19 (1) (a) guarantees to all citizens freedom of speech and expression but does not specifically or separately provide for liberty of the Press. Liberty of Press is implicit in the freedom of speech and expression which is conferred on a citizen. Thus, in *Romesh Thappar. v. State of Madras*, 1950 S. C. R. 514. The Supreme Court has held that freedom of speech and expression includes the freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. In *Brijbhushan v. State of Delhi*, 1950 S. C. R. 605 it has been laid down by the Supreme Court that the imposition of pre-censorship on a journal is a restriction on the liberty of the Press which is an essential part of the right to freedom of speech and expression declared by Art. 19 (1) (a). To the like effect are the observations of Bhagwati J. who, in delivering the unanimous judgment of the Court in *Express Newspaper Ltd. v. Union of India*, A. I. R. 1958 S. C. 578 said at p. 814 that freedom of speech and expression includes within its scope the freedom of the Press. Two things should be noticed. A non-citizen running a newspaper is not entitled to the fundamental right to freedom of speech and expression and, therefore, cannot claim, as his fundamental right, the benefit of the liberty of the Press. Further, being only a right flowing from the freedom of speech and expression, the liberty of the Press in India stands on no higher footing than the freedom of speech and expression of a citizen and that no privilege attaches to the Press as such, that is to say, as distinct from the freedom of the citizen. In short, as regards non citizens running a newspaper, the position under our Constitution is the same as it was when the Judicial Committee decided the case of *Arnold v. The King*, 41 Ind. App. 149 and as regards non-citizens the position may even be worse. Thus if the Press publishes portion of a speech which is ordered to be expunged, there may be the breach of the privilege of the House: *M. S. M. Sharma v. Sri Krishna Sinha*, A. I. R. 1959 S. C. 395.

1029 Law made under Article 194 (3) is subject to Article 13 (2)

A law made by Parliament in pursuance of the earlier part of Art. 105 (3) or by the State Legislature in pursuance of the earlier part of Art. 194 (3) will not be a law made in exercise of constituent power like the law which was considered in *Shankari Prasad Singh v. Union of India*, 1952 S. C. R. 89 at p. 90 but will be one made in exercise of its ordinary legislative powers under Article 246 read with the relevant entries and that consequently, if such a law takes away or abridges any of the fundamental rights, it will contravene the peremptory provisions of Article. 13 (2) and will be void to the extent of such contravention and it may well be precisely the reason why our Parliament and the State Legislatures have not made any law defining the powers, privileges and immunities just as the Australian Parliaments had not made and under

S. 49 of their Constitution corresponding to Art. 194 (3) up to 1955 when the case of *The Queen v. Richards*, (1955) 92 C. L. R. 57 was decided. It does not, however, follow that if the powers, privileges or immunities conferred by the latter part of those Articles are repugnant to the fundamental rights, they must also be void to the extent of such repugnancy. It must not be overlooked that the provisions of Art. 105 (3) and Art. 194 (3) are constitutional law and not ordinary laws made by Parliament or the State Legislatures, and that, therefore, they are as supreme as the provisions of Part III. Further, quite conceivably our Constitution makers, not knowing what powers, privileges and immunities Parliament or the Legislature of a State may arrogate and claim for its Houses, members or committees, thought fit not to take any risk and accordingly made such laws subject to the provisions of Art. 13; but that knowing and being satisfied with the reasonableness of the powers, privileges and immunities of the House of Commons at the commencement of the Constitution, they did not, in their wisdom, think fit to make such powers, privileges and immunities subject to the fundamental right conferred by Art. 19 (1) (a), and by applying the cardinal rules of construction one must ascertain the intention of the Constitution from the language used: *M. S. M. Sharma v. Sri Krishna Sinha*, A. I. R. 1959 S. C. 395

1030 Legislatures not court of record.

There is no doubt that the House has the power to punish for contempt committed outside its chamber, and from that point of view it may claim one of the rights possessed by a Court of Record. A Court of Record, according to Jewitt's Dictionary of English Law, is a court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority. But the Legislative Assemblies in India, never discharged any judicial functions and their historical and constitutional background does not support the claim that they can be regarded as Court of Records in any sense. If that be so, the very basis on which the English courts agreed to treat a general warrant issued by the House of Commons on the footing that it was a warrant issued by a superior Court of Record, cannot be claimed in India and so, it would be unreasonable to say that the relevant power to claim a conclusive character for the general warrant which the House of Commons, by agreement, is deemed to possess, is vested in the Indian Legislatures: *In re Article 143 of Constitution of India*, A. I. R. 1965 S. C. 745

1031 Judge of High Court entertaining petition challenging an order of Legislature imposing penalty, no contempt of House

A Judge of a High Court who entertains or deals with a petition, challenging any order or decision of a Legislature imposing any penalty or issuing any process against a citizen who is not a member of the House outside the four-walls of the Legislative chamber for its contempt, or for infringement of its privileges and immunities, or who passes any order on such petition, does not commit contempt of the said Legislature and the said Legislature is not competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities: *In re Article 143, Constitution India*, A. I. R. 1965 S. C. 745

1032 Contempt of House, penalty to be imposed after hearing the parties

It would not be proper for the Assembly to find a citizen guilty of contempt without giving him a hearing: *In re Article 143 Constitution India*, A. I. R. 1965 S. C. 745

Where a citizen denies that he has committed contempt of the House, the Court should not express any opinion on the controversy. If the Legislative Assembly has the powers and privileges it claim and is entitled to take proceedings for breach thereof, then it must be left to the House itself to determine whether there has, in fact, been any breach of its privilege. Thus, it will be for the House on the advice of its Committee of Privileges to consider the true effect of the Speaker's directions that certain portions of the speech, if it has included the portion which had been so directed to be expunged, is, in the eye of the law, tantamount to publishing something which had not been said and, whether such a publication cannot be claimed to be a publication of an accurate and faithful report of the speech. It will, again, be for the House to determine whether the Speaker's ruling made distinctly and audibly that a portion of the proceedings be expunged amounts to a direction to the Press reporters not to publish the same, and whether the publication of the speech, if it has included the portion directed to be so expunged, is or is not a violation of the order of the Speaker and a breach of the privilege of the House amounting to a contempt of the Speaker and the House: *M. S. M. Sharma v. Sri Krishna Sinha*, A. I. R. 1959 S. C. 395

1033. Right of an Advocate to assist the client is un-controlled by Article 194.

An advocate has the right to practise in all courts including the Supreme Court, before any tribunal or person legally authorised to take evidence and before any other authority or person before whom such advocate is by or under any law for the time being in force is entitled to practise. This right is given by Advocates Act of 1961. Section 14 of the Bar Councils Act also recognises a similar right. If a citizen has the right to move the High Court or the Supreme Court against the invasion of his fundamental rights the statutory right of the advocate to assist the citizen helps the enforcement of the fundamental rights of the citizen. In the enforcement of fundamental rights guaranteed to the citizen the legal profession plays a very important and vital role, and, so, just as the right of the Judiciary to deal with matters brought before them under Art. 226 or Art. 32 cannot be subjected to the powers and privileges of the House under Article 194, so also the rights of the citizens to move the judiciary and the rights of the advocates to assist that process must remain un-controlled by article 194(3). That is one integrated scheme for enforcing the fundamental rights and for sustaining the rule of law in this country: *In re Article 148, Constitution India* A. I. R. 1965 S. C. 745.

1034. Article 19(1) must yield to Article 194.

Article 19 (1)(a) and Article 194 (3) have to be reconciled and the only way of reconciling the same is to read Article 19 (1) (a) as subject to the latter part of Article 194 (3) just as Article 31 has been read as subject to Article 265 in the case of *Ranjitlal v. Income-tax Officer, Mahindraagarh*, 1951 S.C.R. 127 and *Laxmanappa Hanumanthappa v. Union of India*, 1955 (1) S.C.R. 769, where this Court has held that Article 31 (1) has to be read as referring to deprivation of property otherwise than by way of taxation. The decision in *G. K. Reddy v. Nafesul Hasan* A.I.R. 1954 S.C. 636, it was held proceeded entirely on a concession of counsel and could not be regarded as

a considered opinion on the subject. In interpreting Articles 19 and 194, principle of harmonious construction must be adopted, and so construed, the provisions of Article 19(1)(a), which are general, must yield to Article 194 (1) and the latter part of its cl. (3) which are special : *M. S. M. Sharma v. Sri Krishna*, A. I. R. 1959 S.C. 395.

1035. Deprivation of personal liberty under Article 195 is constitutional.

Article 194 (3) read with the rules framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if a citizen is eventually deprived of his personal liberty as a result of the proceedings before the committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his Fundamental Rights under article 21 : *M.S.M. Sharma v. Sri Krishna Sinha*, A.I.R. 1959 S.C. 395.

1036. Court cannot regulate the procedure of House.

Rule 207 of the rules laid down the conditions as to the admissibility of motion of privilege. According to cl. (ii) of that rule the motion must relate to a specific matter of recent occurrence. The speech was delivered on 30th May 1957, and Sri Nawal Kishore Sinha M. L.A. sent his notice of motion on 10th June 1957, that is to say, 10 days after the speech had been delivered. It was said that the matter that occurred 10 days prior to the date of the submission of the notice of motion cannot be said to be a specific matter of recent occurrence. The Court said that it is impossible for the court to prescribe a particular period for moving a privilege motion so as to make the subject matter of the motion a specific matter of recent occurrence. The matter must obviously be left to the discretion of the Speaker of the House of Legislature to determine whether the subject matter is of recent occurrence or not : *M.S.M. Sharma v. Krishna Sinha*, A.I.R. 1959 S.C. 395.

1037. At any time—Rule 215—Meaning of.

Rule 215 of the Rules provided that the Committee of Privileges should meet as soon as may be after the question has been referred to it and from time to time thereafter till a report is made within the time fixed by the House. In this case the House admittedly did not fix time within which the report was to be made by the Committee of Privileges. This circumstance immediately attracted the proviso, according to which where the House does not fix any time for the presentation of the report the report has to be presented within one month of the date on which the reference to the Committee was made. If this period of one month is allowed to lapse, the committee does not become functus officio, because the second proviso to cl. (i) of Rule 215 clearly provides that the House may at any time on a motion being made, direct that the time for the presentation of the report by the Committee be extended to a date specified in the motion. The 'words' at any time' occurring in the second proviso quite clearly indicate that this extension can be made. Further, the question of time within which the Committee of Privileges is to make its report to the House is a matter of internal management of the affairs of the House and a matter between the House and its Committee and confers no right on the party whose conduct is the subject matter of investigation, and this is so particularly when the House has

the power to extend time "at any time" : *M.S.M. Sharma v. Sri Krishna Sinha*, A.I.R. 1959 S.C. 395.

1038. Effect of expunging the remark.

The effect in law of the order of the Speaker to expunge a portion of the speech of a member is as if that portion had not been spoken. A report of the whole speech in such circumstances, though factually correct, may, in law, be regarded as perverted and unfaithful report and the publication of such a perverted and unfaithful report of speech, i. e. including the expunged portion in derogation to the orders of the Speaker passed in the House may, *prima facie* be regarded as constituting a breach of the privilege of the House arising out of the publication of the offending news item : *M.S.M. Sharma v. Sri Krishna*, A. I. R. 1959 S. C. 345.

1039. Court not to Judge whether contempt is committed.

As to whether there has, in fact, been any breach of the privilege of the House, or not is a question that the House alone is the judge : *M.S.M. Sharma v. Krishna Sinha*, A. I. R. 1959 S.C. 395.

1040. Right to move Court in case of violation of article 20 and 21 not barred.

The question may arise, if a citizen complains that his fundamental rights had been contravened either under Article 20 or Article 21 can he or can he not move the Supreme Court under Article 32. If a citizen moves the Supreme Court and complains that his fundamental right under Article 21 had been contravened, it would be the duty of the Court to examine the merits of the said contention, and that inevitably raises the question as to whether the personal liberty of the citizen has been taken away according to the procedure established by law when the action is being taken under Article 194. In fact, this question was actually considered by the Supreme Court in the case of *M. S. M. Sharma*, (1959) Supp (1) S. C. R. 806. Though the answer was made in favour of the legislature but that will not cover all cases which may arise subsequently. If in a given case, the allegation made by citizen is that he has been deprived of his liberty not in accordance with law, but for capricious or mala fide reasons the Supreme Court will have to examine the validity of the said contention, and it would be no answer in such a case to say that the warrant issued against the citizen is a general warrant and a general warrant must stop all further judicial inquiry and scrutiny. The impact of the fundamental constitutional right conferred on citizens in India by Article 32 of the Constitution on the latter part of Article 194 (3) is decisively against the view that a power or privilege can be claimed by the House, though it may be in consistent with Art. 21: *In-re Article 143 Constitution of India*, A.I.R. 1965 S.C. 745.

1041. Allegation of malafides in privilege proceedings.

The suggestion made was that it was at the instance of the Chief Minister that the Committee of privileges moved the matter. It may be seen that the Chief Minister was but one of the fifteen members of the Committee and one of the three hundred and nineteen members of the House. The Committee of Privileges ordinarily includes members of all parties represented in the house and it is difficult to expect that the Committee, as a body, will be actuated by any malafide intention against a citizen. Further the business of the Committee is only to make a report to the House and the ultimate decision will be that of the House

itself. In these circumstances, the allegations of bad faith were not accepted: *M. S. M. Sharma v. Sri Kishan Sinha*, A. I. R. 1959 S. C. 395.

1042. Power to punish for contempt should be exercised carefully. So far as the Courts are concerned with the question relating to the exercise of power to punish for contempt, Judges always keep in mind the warning addressed to them by Lord Atkin in *Paul v. Attorney General of Trinidad*, A.I.R. 1938 P.C. 841. Lord Atkin said "Justice is not a cloistered virtue; it must be allowed to suffer the scrutiny and respect even though outspoken comments of ordinary men. We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the Court, but may sometimes affect it adversely. Wise judges never forget that best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the 'restraint, dignity and decorum which they observe in their judicial conduct'. It may be said that what is true of the Judicature is equally true of the Legislatures : *In-re Article 143 of the Constitution of India*, A. I. R. 1963 S. C. 745.

1043 "Dissolution" and "Prorogation"-English practice cannot be availed in India

The argument that the bill which was pending the assent of the President at the time when the Legislative Assembly was dissolved has lapsed and so no further proceedings could have been validly taken in respect of it is not sound. It may be seen that wherever the English Parliamentary form of Government prevails the words "prorogation and dissolution" have acquired the status of terms of art and their significance and consequences are well settled. It was suggested that if there is no provision to the contrary in the Indian Constitution the English convention with regard to the consequences of dissolution should be held to follow even in India. There is no doubt that in England, in addition to bringing a session of Parliament to a close, prorogation puts an end to all business which is pending consideration before either House at the time of such prorogation as a result any proceedings either in the House, or in any Committee of the House lapse with the session. Dissolution of Parliament is invariably preceded by prorogation, and what is true about the result of prorogation, is a fortiori true about the result of dissolution. Dissolution of Parliament is sometimes described as a civil death of parliament. Ilbert in his work on Parliament, has observed that prorogation means the end of a session (not of a Parliament) and adds that like dissolution, it kills all bills which have not yet passed. He also describe dissolution as an end of a parliament (not merely of a session) by royal proclamation and observes that it wipes the slate clean of all uncompleted bills or other proceedings. Thus the inevitable conventional consequence of dissolution of Parliament is that there is a civil death of Parliament and all uncompleted business pending before Parliament lapses

In this connection it would be relevant to see how Parliament in England is prorogued. This is how prorogation is described in Mays "Parliamentary Practice; If Her Majesty attends in person to prorogue Parliament at the end of the session, the same ceremonies are observed as at the opening of Parliament; the attendance of the Commons in the House of

peers is commanded; and on their arrival at the bar, the Speaker addresses Her Majesty, on presenting the supply bills, and adverts to the most important measures that have received the sanction of Parliament during the session. The royal assent is then given to the bills which are awaiting that sanction and Her Majesty's speech is read to both Houses of Parliament by herself or by her Chancellor, after which the Lord Chancellor, having received directions from Her Majesty for that purpose, addresses both Houses in this manner: My Lords and Members of the House of Commons, it is Her Majesty's royal will and pleasure that this Parliament be prorogued (to a certain day). According to May, the effect of prorogation is at once to suspend all business until Parliament shall be summoned again. Not only all proceedings pending at the time are quashed except impeachment by the Commons and appeals before the House of Lords, even a bill must therefore be renewed after prorogation as if it had never been introduced. To the same effect are the statements in Halsburys Laws of England (vide) ; Vol 23 PP 371, 372, Paragraphs 648 to 651.

According to Anson prorogation ends the session of both Houses simultaneously and terminates all pending business. A bill which has passed through some stages but which is not ripe for royal assent at the date of prorogation must begin at the earliest stage when Parliament is summoned and opened by a speech from the throne.

It would thus be seen that under English parliamentary practice bills which have passed both Houses and are awaiting assent of the Crown receive the royal assent before the House of Parliament are prorogued. In other words the procedure which appears to be invariably followed in proroguing and dissolving the Houses shows that no bill pending royal assent is left outstanding at the time of prorogation or dissolution. That is why the question as to whether a bill which is pending assent lapses as a result of prorogation or dissolution does not normally arise in England.

Thus there can be no doubt that in England the dissolution of the Houses of Parliament kills all business pending before either House at the time of dissolution. It was suggested that under the Indian Constitution the result of dissolution should be held to be the same ; and the bill awaiting assent should be deemed to have passed.

The powers, privileges and immunities of State Legislatures and their members with which Article 194 (3) deals have no reference or relevance to the legislative procedure which is the subject matter of the provisions of Article 196. In the context, the wide powers conferred by Article 194 (3) must be considered along with the words privileges and immunities to which the said clause refers, and there can be no doubt that the said word can have no reference to the effect of dissolution. The powers of the House of the Legislature of a State to which reference is made in Article 194 (3) may, for instance, refer to the powers of the House to punish for contempt of the House. The two topics are entirely different and distinct and the provisions in respect of one cannot be invoked in regard to the other. Therefore, it is wrong to say that unless the Legislature by law has made a contrary provision, the English convention with regard to the effect of dissolution should prevail in this country : *Parshottam v. State of Kerala*, A. I. R. 1932 S. C. 701.

1044. Power to issue general warrant.

It is somewhat doubtful whether the power to issue a general unspeaking warrant claimed by the House is consistent with, Section 554 (2) (b) and Section 555 of the Code of Criminal Procedure. It appears that in England general warrants are issued in respect of commitment for contempt by superior courts of record.

The House of Commons being part of the High Court of Parliament is a superior Court and the general warrants issued by it cannot be subjected to the close scrutiny, just as similar warrants issued by other superior courts of record are held to be exempt from such scrutiny.

It would not be inaccurate to say that the right claimed by the House of Commons not to have its general warrants examined in habeas corpus proceedings has been based more on the consideration that the House of Commons is in the position of a superior court of record and has the right like other superior courts of record to issue a general warrant for commitment of persons found guilty of contempt. Like the general warrant issued by superior Courts of record in respect of their contempt, the general warrants issued by the House of Commons in similar situations should be similarly treated beyond the scrutiny of the courts in habeas corpus proceedings. But in India it is not so: *In re Article 113 Constitution of India*, A. I. R. 1965 S. C. 645.

1045. "Prerogation and Dissolution under Indian Constitution does not dissolve upper house.

Article 168 provides that for every State there shall be a Legislature which shall consist of the Governor and in the State of Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, Uttar Pradesh and West Bengal, of two Houses, and in other States, of one House. Article 168(2) provides that where there are two Houses of the Legislature of State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly. Article 170 deals with the composition of the Legislative Assembly, and Article 171 with that of the Legislative Council. Article 172 provides for the duration of the State Legislatures. Under Article 172 (1) the normal period for the life of the Assembly is five years unless it is sooner dissolved. Article 172 (2) provides that the Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provision made in that behalf by Parliament by law. It would thus be seen that under the Constitution, where the State Legislature is bicameral the Legislative Council is not subject to dissolution and this is a feature which distinguishes the State Legislatures from the English House of Parliament. When the Parliament in England is dissolved both the Houses stand dissolved whereas the position is different in India. In the State with bicameral Legislature only the Legislative Assembly can be dissolved but not the Legislative Council. The same is the position under Article 83 in regard to the House of the People and the Council of States. This material distinction has to be borne in mind in construing the provisions of Article 136 and appreciating their effect: *Parshottam v State* A. I. R. 1962 S. C. 701.

1046. Bill Pending in legislature when lapses on prorogation.

Under clause 3 of Article 196 a Bill pending in the legislature of a State will not lapse by reason of the prorogation of the House or Houses thereof. Thus, this clause makes a complete departure from the English convention inasmuch as the prorogation of the House or Houses does not affect the business pending before the legislature at the time of prorogation. In considering the effect of the dissolution on pending business it is therefore necessary to bear in mind this significant departure made by the Constitution in regard to the effect of prorogation. Under this clause the pending business may be pending either in the Legislative Assembly or in the Legislative Council or may be awaiting the assent of the Governor. At which ever stage the pending business may stand, so long as it is pending before the Legislature of a State it shall not lapse by the prorogation of the Assembly. Thus there can be no doubt that unlike in England prorogation does not wipe out the pending business : *Purshottam v. State*, AIR 1962 S.C. 701.

1047. Scope of Article 196 Clause 5—Bills does not lapse if assent of President or Governor not given

Clause 5 of Article 196 deals with two categories of cases. The first part deals with Bills which are pending before the Legislative Assembly of a State, and the second with Bills which having been passed by the Legislative Assembly are pending before the Legislative Council. The Bills falling under both the clauses lapse on the dissolution of the Assembly. The latter part of clause (5) deals with cases of Bills which are supplemental to the cases covered by clause (4). Where as clause (4) deal with Bills which had originated in the Legislative Council. The latter part of clause (5) deals with Bills which having originated in the Legislative Assembly have been passed by it and are pending before the Legislative Council. Clause (4) provides that Bills falling under it shall not lapse on dissolution of the Assembly and it was thought necessary to provide as a matter of precaution that bills falling under the latter part of clause (5) shall lapse on the dissolution of the Assembly.

Part 1 of clause 5 of Article 196 may include a Bill which is pending before the Legislative Assembly of a State which is unicameral. It may also include a case of a Bill which is pending before the Legislative Assembly of a State which is bicameral; or it may include a case of a Bill which has been passed by the Legislative Council in a bicameral State and is pending before the Legislative Assembly. In all these cases the dissolution of the Assembly leads to the consequence that the Bills lapse. It is significant that whereas clause (3) of Article 196 deals with the case of a Bill pending in the Legislature of a State clause (5) of Article 196 deals with a Bill pending in the Legislative Assembly of a State or, pending in the Legislative Council and that clearly means that a Bill pending assent of the Governor or the President is outside clause (5). If the Constitution makers had intended that a bill pending assent should also lapse on the dissolution of the Assembly a specific provision to that effect would undoubtedly have been made. Similarly, if the Constitution makers had intended that the dissolution of the Assembly should lead to the lapse of all pending business it would have been unnecessary to make the provisions of

clause (5) at all. The cases of Bills contemplated by clause (5) would have been governed by the English convention in that matter and would have lapsed without a specific provision in that behalf. The effect of clause (5) is to provide for all cases where the principle of lapse on dissolution should apply. If that be so, a Bill pending assent of the Governor or President is outside of clause (5) and cannot be said to lapse on the dissolution of the Assembly.

It is wrong to say that if clause (5) was intended to deal with all cases where pending business would lapse on the dissolution of the Assembly it was hardly necessary to make any provision by clause (4). This provision has been inserted as have been thought necessary to make a provision for Bills pending in the Legislative Council of a State because the Legislative Council is a continuing body not subject to dissolution and the makers of Constitution wanted to make a specific provision based on that distinctive character of the Legislative Council. Having made a provision for a Bill originating and pending in the Legislative Council by clause (4) it was thought necessary to deal with a different category of cases where bills have been passed by the Legislative Assembly and are pending in the Legislative Council. In the absence of clause (5) it would have followed that all pending business, on the analogy of the English convention, would lapse on the dissolution of the Legislative Assembly. The scheme of Articles 200 and 201 also supports the conclusion that a Bill pending the assent of the Governor or the President does not lapse as a result of the dissolution of the Assembly and that incidentally shows that the provisions of Article 196 (5) are exhaustive: *Purshottam v. State*, A. I. R. 1962 S. C. 701.

1048. President or Governor not bound to give assent within any specified time.

If a bill pending the assent of the Governor or the President is held to lapse on the dissolution of the Assembly it is not unlikely that a fair number of Bills which may have been passed by the Assembly, say during the last six months of its existence may be exposed to the risk of lapse consequent on the dissolution of the Assembly unless assent is either withheld or granted before the date of the dissolution. It is significant that Article 200 and 201 do not provide for a time limit within which the Governor or the President should come to a decision on the Bill referred to him for his assent. Where it appeared necessary and expedient to prescribe a time limit the Constitution has made appropriate provisions in that behalf [vide Article 197 (1) (b) and (2) (b)]. Therefore, the failure to make any provision as to the time within which the Governor or the President should reach a decision may suggest that the Constitution makers knew that Bill which was pending the assent of the Governor or the President did not stand the risk of lapse on the dissolution of the Assembly. That is why no time limit was prescribed by Article 200 and 201: *Purshottam v. State*, A. I. R. 1962 S. C. 701.

1049. Bill sent back with a message by President or Governor can be considered by new House.

It was said that the scheme of two Articles 200 and 201 postulate that the Bill which is sent back with the message of the President ought to be sent back to the same House that originally passed it, it was said that when the message is sent by the President, the House is requested to reconsider the

Bill and it is provided that if the Bill is again passed by the House the Governor shall not withhold assent therefrom. The idea being that the concept of reconsideration must involve the identity of the House unless the House had considered it in the first instance it would be illogical to suggest that it should reconsider it. Reconsideration means consideration of the Bill again and that could be appropriately done only if it is the same House and should consider it at the second stage. It was suggested that it would be basically unsound to ask the successor House to take the Bill as it stands and not give it an opportunity to consider the merits of all the provisions of the Bill. The Supreme Court however held that, if the effect of Article 196 is that the Bills pending assent do not lapse on the dissolution of the House then the relevant provisions of Article 200 must be read in the light of these provisions. There is nothing wrong in the concept of democratic Government in asking a successor House to reconsider the Bill with the amendments suggested by the President because the provision in Article 200 makes it perfectly clear that it is open to the successor House to throw out the Bill altogether. It is only if the Bill is passed by the successor House that the stage is reached to present it to the Governor or the President for his assent, not otherwise: *Purshottam v. State*, AIR 1962 S.C. 701.

1050. Bill pending in Council but not passed by Assembly does not lapse on prorogation of Assembly.

Clause (4) of Article 196 deals with a case where a Bill is pending in the Legislative Council of a State and the same has not been passed by the Legislative Assembly and it provides that such a bill pending before the legislative Council of a State shall not lapse on the dissolution of the Legislative Assembly. It would be noticed that this clause deal with the case of a bill which has originated in the Legislative Council and has yet to reach the legislative Assembly, and so the Constitution provides that in regard to such a bill which has yet to reach and be dealt with by the legislative Assembly the dissolution of the Legislative Assembly will not affect its further progress and it will not lapse despite such dissolution: *Purshottam v. State of Kerala*, A.I.R. 1962 S.C. 701.

1051. Money Bill, Municipal taxation does not fall within the term

All Municipal Taxation is outside the definition of a money bill, so that in regard to municipalities and the imposts made for purposes of local administration, no distinction is drawn between taxes and fees. The "fees" therefore which are specifically excluded from the definition are fees imposed by the State Government or its administrative agencies other than by instruments of local self Government. The exclusion from the definition is as regard two categories, (1) fees for licences, and (2) fees for services rendered. It is obvious that a tax which is collected as a licence fee would not fall outside this definition of a money bill merely because the tax was imposed and collected as a licence fee. If therefore pure taxation measure would be money bills, then it is obvious that the fees for licences which are outside the definition would be those fees which are imposed to meet the cost of regulation and supervision of an activity which is in compliance with its terms. Thus a contribution under Section 76(1) of the Madras Religious Endowments Act as amended in 1954, would be a fee for services rendered because there is no question of licences being taken out in these cases and fees for regulating an activity such as the fees payable for licences

under the Regulation of Industries Act, 1951 or for licences for trading in essential commodities under the Essential Commodities Act, 1955 would on the other hand fall under the head "payment of fees for licences : *Corporation of Calcutta v. Liberty Cinema*, A. I. R. 1965 S. C. 1170.

1052. Office of profit. How established

For holding an office of profit under the Government, one need not be in the service of Government and there need be no relationship of master and servant between them. The Constitution itself makes a distinction between 'the holder of an office of profit under the Government' and the holder of a post or service under the Government see Articles 309 and 314. The Constitution has also made a distinction between the holder of an office of profit under the Government and the holder of an office of profit under a local or other authority subject to the control of Government; see Articles 18 (2) and 66 (4).

In *Abdul Shakur v. Rikhab Chand*, 1958 S. C. R. 387, the appellant was the manager of a school run by a committee of management formed under the provisions of the Durgah Khwaja Sahib Act, 1950. He was appointed by the administration of the Durgah and was paid Rs 100 per month. The question rose whether he was disqualified to be chosen as a member of Parliament in view of Article 102 (1) (a) of the Constitution. It was contended for the respondent in that case that under sections 5 and 9 of the Durgah Khwaja Sahib Act, 1955 the Government of India had the power of appointment and removal of members of the Committee of management as also the power to appoint the administrator in consultation with the committee, therefore, the appellant was under the control and supervision of the Government and that therefore he was holding an office of profit under the Government of India. This contention was repelled and the Supreme Court pointed out the distinction between 'the holder of an office of profit under the Government' and 'the holder of an office of profit under some other authority subject to the control of Government'.

Where a person holds an office of profit under the Durgapur Project Ltd. and the Hindustan Steel Ltd. which are incorporated under the Indian Companies Act; the fact that the Comptroller, Auditor-General and the Government of India exercises some control will make that person a holder of office under the two companies. See *Guru Gobinda Basu v. Shankri Prasad*, A. I. R. 1964 S. C. 252. It has to be noted that in *Maulana Abdul Shakur's case* 1958 S. C. R. 387 the appointment was not made by the Government nor the Government had the power to dismiss. The appointment was made by the administrator of a committee and he was liable to be dismissed by the same body. In these circumstances Supreme Court observed:

"No doubt the Committee of the Durgah Endowment is to be appointed by the Government of India but it is a body corporate with perpetual succession acting within the four corners of the Act. Merely because the Committee or the members of the Committee are removable by the government of India or the Committee can make bye-laws prescribing the duties and powers of its employees cannot in our opinion convert the servant of the Committee into holders of office of profit under the Government of India." The appellant is neither appointed by the Government of India

nor is removable by the Government of India nor is he paid out of the revenues of India." The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenue are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always a decisive factor. But the appointment of the appellant does not come within this test."

It is clear from the aforesaid observations that in *Abdul Shankur's* Case 1958 S. C. R. 397 the facts which were held to be decisive were (a) the power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion, and (b) payment from out of Government revenues though it was pointed out that payment from a source other than Government revenue was not always a decisive factor. In the case of *Guru Gobinda Basu v. Shankari Prasad*, A. I. R. 1964 S. C. 252 the appointment of the appellant as also his continuance in office rested solely with the Government of India in respect of the two companies namely Durgapur Projects Ltd. and Hindustan Steel Ltd. His remuneration was also fixed by Government. The two companies are statutory bodies distinct from Government and they are Government companies within the meaning of the Indian Companies Act, 1956 as 100% of the shares are held by the Government. In the performance of his functions the appellant was held to be controlled by the Comptroller and Auditor-General who himself is undoubtedly holder of an office of profit under the Government, though there are safeguards in the Constitution as to his tenure of office and removability therefrom. Under Article 148 of the Constitution the Comptroller and Auditor-General of India is appointed by the President and he can be removed from office in like manner and on the like ground as a Judge of the Supreme Court. The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and until they are so determined shall be as specified in the Second Schedule to the Constitution. Under cl. (4) of Art. 148 the Comptroller and Auditor-General is not eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office. Clause (5) of the said Article lays down that subject to the provisions of the Constitution and of any law made by Parliament, the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General. Under Art. 149 of the Constitution, the Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of the Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively. The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union have to be submitted to the President and the reports of the Comptroller and Auditor-General relating to the accounts of a State have to be submitted to the Governor.

From the aforesaid provisions it is apparent that the Comptroller and Auditor-General is himself a holder of an office of profit under the Government of India, being appointed by the President and his administrative powers are such as may be prescribed by rules made by the President, subject to the provisions of the Constitution and of any law made by Parliament. Therefore scrutinised from this point of view of substance rather than of form, it becomes apparent that the appellant in the case of *Guru Gobinda Basu* (supra) as the holder of an office of profit in the two Government Companies, names the Durgapur Project Ltd. and the Hindustan Steel Ltd; is really under the Government of India; he is appointed by the Government of India, he is removable from office by the Government of India, he performs functions for two Government companies under the control of the Comptroller and Auditor-General who himself is appointed by the President and whose administrative powers may be controlled by rules made by the President.

In *Ramappa v. Sangappa*, 1959 S. C. R. 1167 the question arose as to whether the holder of a village office who has a hereditary right to it is disqualified under Art. 191 of the Constitution, which is the counter-part of Art. 192, in the matter of membership of the State Legislature. It was observed therein :

"The Government makes the appointment to the office though it may be that it has under the statute no option but to appoint the heir to the office if he has fulfilled the statutory requirements. The office is therefore, held by reason of the appointment by the Government and not simply because of a hereditary right to it. The fact that the Government cannot refuse to make the appointment does not alter the situation "

In this case again the decisive test was held to be the test of appointment. It is wrong to say that the several factors which enter into the determination of this question, the appointing authority, the authority vested with power to terminate the appointment, the authority which determines the remuneration, the source from which the remuneration is paid, and the authority vested with power to control the matter in which the duties of the office are discharged and to give directions in that behalf must all co-exist and each must show sub-ordination to Government and that it necessarily follow that if one of the elements is absent, the test of a person holding an office under the Government Central or State, is not satisfied. The cases referred to above specifically point out that the circumstance that the source from which the remuneration is paid is not from public revenue is a neutral factor-not decisive of the question. Whether the stress is to be laid on one factor or the other will depend on the facts of each case but where the several elements, the power to appoint, the power to dismiss, the power to control and give directions as to the manner in which the duties of the office are to be performed and the power to determine the question of remuneration are all present in a given case, then the office in question will be deemed to be an office of profit : *Guru Gobinda Basu v. Shankri Prasad*, A. I. R. 1964 S. C. 252.

1053. Irregularity in procedure of legislature, effect

One of the Ministers moved that the C. P. and Berar Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill as considered by the House be passed in to law. Thereupon the Speaker read the motion to the House and the measure. The official report of the proceeding did not record that the Speaker put the question as required by R. 23 (1) of the

Rules governing the legislative business and that the motion was carried. The original bill signed and authenticated by the Speaker, however contained an endorsement by the Speaker that the bill was passed by the Assembly on 5th of April, 1950. The endorsement was signed by the Speaker on 10th of May, 1950. The Official report of the proceeding was prepared on 21st of June, 1950 and was signed by the Speaker on 1st October, 1951. It was held that the omission as to the motion having been put and carried could not on the face of the explicit statement by the Speaker endorsed on the bill, be taken to establish that the bill was not put to the House and carried by it. In any case, the omission to put the motion formally to the House, even if true, was, in the circumstances no more than a mere irregularity of procedure as it was not disputed that the overwhelming majority of the members present and voting were in favour of carrying the motion and no dissent voice was actually raised: *State of Bihar v. Kameshwar Singh*, 1952 S. C. J. 354, 1962 S. C. R. 189.

1054 Disqualification incurred before election not covered by Article 191

Article 191 (1) provide that a person shall be disqualified for being chosen as and for being a member of the Legislative Assembly or Legislative Council of a State if, inter alia, he is so disqualified by or under any law made by Parliament. The appellant incurred a disqualification under Art. 194 (1) (e) read with S. 7 (d) of the Act, and this disqualification was incurred by him subsequent to his election. It is well settled that the disqualification to which Article 191 (1) refers must be incurred subsequent to the election of the member. This conclusion follows from the provision of Article 190 (3) (a). This Article refers to the vacation of seats by members duly elected. Sub Article 3 (2) (a) provides that if a member of a House of the Legislature of a State becomes subject to any of the disqualifications mentioned in clause (1) of Art 191, his seat shall thereupon become vacant the corresponding provision with regard to the disqualification of members of both house of Parliament are prescribed by Articles 101, 102 and 103 of the Constitution. In *Election Commission, India, v. Saka Venkata Subba Rao*, 1953 S. C. R. 143. it was held that Article 190 (3) & 192 (1) are applicable only to disqualifications a member becomes subject to after being elected. This view was approved in *Brundaban v. Election Commission* A.I.R. 1965 S.C. 1892

The words "the question shall be referred for the decision of the Governor," do not import the assumption that any other authority has to receive the complaint and after a *prima facie* and initial investigation about the complaint, send it to the Governor for his decision. These words merely emphasise that any question of the type contemplated by clause (1) of Art. 192 shall be decided by the Governor and Governor alone; and no other authority can decide it, nor can the decision of the said question as such fall within the jurisdiction of the Courts. That is the significance of the words shall be referred for the decision of the Governor. If the intention was that the question must be raised first in the legislative Assembly and after a *prima facie* examination by the Speaker it should be referred by him to the Governor, Art. 192 (1) would have been worded in an entirely different manner. There is no justification for reading such serious limitation in Art. 192 (1) merely on the basis of the implication: *Brundaban v. Election Commission*, A.I.R. 1965 S.C. 1892

1055 Scope of power of Election Commission under article 192

The decision on the question raised under Article 192 (1) is to be pronounced by the Governor but that decision has to be in accordance with the opinion of the Election Commission. The object of this provision clearly is to leave it to the Election Commission to decide the matter, though the decision as such would formally be pronounced in the name of the Governor. When the Governor pronounces his decision under Article 192 (1) he is not required to consult his Council of Ministers; he is not even required to consider and decide the matter himself, he has merely to forward the question to the Election Commission for its opinion, and as soon as the opinion is received he is to pronounce his decision. Thus all complaints in respect of disqualification subsequently incurred by members who have been validly elected, have, in substance to be tried by the Election Commission, though the decision in form has to be pronounced by the Governor. It is the opinion of the Election Commission which is in substance decisive; and it is legitimate to assume that when the complaint is received by the Governor and he forwards it to the Election Commission, the Election Commission should proceed to try the complaint before it gives its opinion: *Eidun v. Election Commission*, A. I. R. 1965 S. C. 1392

1056 Who can raise the question of Disqualification

It is true that Article 192 (2) requires that whenever a question arises as to the subsequent disqualification of a member of the Legislative Assembly, it has to be forwarded by the Governor to the Election Commission for its opinion. It is conceivable that in some cases complaint made to the Governor may be frivolous or fantastic, but if they are of substantial character, the Election Commission will find no difficulty in expressing its opinion that they should be rejected straightaway. The object of Art. 192 is plain. No person who has incurred any of the disqualifications specified by Article 191 (1) is entitled to continue to be a member of the Legislative Assembly of a State and since the obligation to vacate his seat as a result of his subsequent disqualification has been imposed by the Constitution itself by Art. 190(3)(a) there should be no difficulty in holding that any citizen is entitled to make a complaint to the Governor alleging that any member of the Legislative Assembly has incurred one of the disqualifications mentioned in Article 191 (1) and should therefore vacate his seat. The whole object of democratic election is to constitute legislative chambers composed of members who are entitled to that status, and if any member loses that status by reason of a subsequent disqualification, it is in the interests of the constituency which such a member represents that the matter should be brought to the notice of the Governor and decided by him in accordance with the provision of Art. 192 (2).

The argument that the question of disqualification can be raised only on the floor of the Legislative Assembly and can be raised by members of the Assembly and not by an ordinary citizen or voter in the form of a complaint to the Governor was held to be unsustainable. Article 192 (1) does not permit any limitations. What the said clause requires is that a question should arise; how it arises, by whom it is raised and in what circum-

tances it is are not relevant for the purpose of the application of this clause. All that is relevant is that a question of the type mentioned by the clause should arise.

1057 Modification under Article 370 extent of power of President

Where the modification made prescribed that the six seats in the House of the People from the State of Jammu and Kashmir would be filled by Nomination by the President on the recommendation of the Legislature of the State, it was held that in effect the modification made by the President was that the six seats will be filled by indirect election and not by direct election. The element of election still remains in the matter of filling seats, therefore, it could not be said that there has been a radical alteration in Article 82 by modification effected by the Constitution (Application to Jammu and Kashmir) Order, 1954.

The object behind enacting Article 370 (f) was to recognise the special position of the State of Jammu and Kashmir and to provide for that special position by giving power to the President to apply the provisions of the Constitution to that State with such exceptions and modifications as the President might by order specify. The power to make exception implies that the President can provide that a particular provision of the Constitution would not apply to that State. If, therefore, the power is given to the President to efface in effect any provision of the Constitution altogether in its application to the State of Jammu and Kashmir it seems that when he is also given the power to make modification that power should be considered in its widest possible amplitude. If he could efface a particular provision of the Constitution altogether, in its application to the State of Jammu and Kashmir, it was intended by the Constitution that he should have the power to amend a particular provision in its application to the State of Jammu and Kashmir. When the Constitution used the word modification in Article 370 (f) the intention was that the President would have the powers to amend the provisions of the Constitution, if so thought fit in their application to the State of Jammu and Kashmir: *Puran Lal v. President of India*, 1961 D. E. C. 71 : A. I. R. 1961 S. C. 1519

1058. Filling of the seats, meaning of

Some Articles of the Constitution and some sections of the Representation People Act, 1957 refer to seats in connection with election to the House of the People. For instance when Art. 81 (2) (b) provides for the same ratio throughout the State between the population of each constituency and the number of seats allotted to it, it does refer to seats, but in this context the use of the word "seats" was inevitable. Similarly Article 84 which lays down the qualification for the members of Parliament begins by saying that a person shall not be qualified to be chosen to fill a "seat" in Parliament unless he satisfies the tests prescribed by its cls. (a) (b) and (c). Here again the expression to fill a seat had to be used in the context. The same comment can be made about the use of the word "seat" in Article 102 (2). There is no doubt that when a candidate is duly elected from any Constituency to the House of the People he fills a seat in the House as an elected repre-

sentative of the said constituency, and so the expression "filling the seat" is naturally used whenever the context so requires.

The position in regard to the sections of the Representation of the People Act which use the word "seat" or the expression "fill the seat" is exactly similar. Section 32 of the Representation of the People Act says that any person may be nominated as a candidate for election to "fill a seat" if he is qualified in that behalf.

This section does not mean that the nomination of a person as a candidate for election is for a seat; such nomination is for the constituency. After the election is over the elected candidate is qualified to fill a seat in the House of the People to which he is elected. It is in that sense that the expression "a candidate for election to fill a seat" is used in this section. The use of the same expression in Ss. 33,(2) 53,(2) 54 and 55 bears the same interpretation. The use of the said expression or the reference to "seat" in some of the articles of the Constitution or the Sections of the Act does not, therefore, mean that election to the House of the People from a double-member constituency is held not for the constituency as a whole by reference to the two seats: *V. V. Giri's Case* A. I. R. 1962 S. C. 1318.

CHAPTER XXVII
JURISDICTION OF SUPREME COURT
SYNOPSIS

- 1059. General
- 1060. Court of Record—Meaning
- 1061. Contempt of Court

ORIGINAL JURISDICTION

(Article 131)

- 1062. General
- 1063. Power of Supreme Court to go into the competency of acts of accessions

APPELLATE JURISDICTION

- 1064. General

CONSTITUTIONAL APPEALS

(Article 132)

- 1065. General
- 1066. Judgment
- 1067. Final order
- 1068. Other Proceedings
- 1069. Scope of Article 132 is very wide
- 1070. Interpretation of Constitution—Meaning of
- 1071. Interpretation of Article 14 is well settled
- 1072. Substantial question as to the interpretation of this Constitution
- 1073. Scope for difference of opinion does not raise a substantial question of law
- 1074. Case may not be referred to five Judges under article 145 if no Constitutional question is involved
- 1075. Civil proceedings—Proceedings for the recovery of tax is a civil proceedings
- 1076. Certificate and order granting leave at variance—Effect
- 1077. Obiter observations should be avoided specially under article 132.
- 1078. Certificate under Article 132 may be Limited

1079. Appeal from single Judge does not lie under Article 132 when there is no constitutional question

NEW POINT

1080. New point cannot be allowed to be raised
 1081. Point involving leading of evidence cannot be raised
 1082. Point not taken in grounds of appeal
 1083. Substantial point not raised in High Court cannot be argued in High Court
 1084. Specific averment not made in writ petitions before High Court, Supreme Court cannot interfere
 1085. New point may be urged with the leave of Court
 1086. Procedure established by statute sought to be by-passed—New ground cannot be allowed to be urged

FINDING OF FACT

1087. Finding of fact cannot be challenged in Supreme Court
 1088. Concurrent finding of fact Supreme Court not to interfere
 1089. Supreme Court not to normally interfere when discretion is judiciously exercised

CIVIL APPEALS BY CERTIFICATE

FROM HIGH COURT

(Article 133)

1090. General
 1091. Article 133 is prospective
 1092. Judgment restoring the decree passed in 1946 is appealable
 1093. Scope of Article 133 in appeals from judgments passed under Article 226
 1094. Scope of Article 133 cannot be restricted by a statute
 1095. Certificate under Article 133 may not be obtained if the practice of the Court so permits.
 1096. Matters involving revenue is a civil proceedings, even when brought before the High Court under Article 226.
 1097. Limited certificate cannot be issued by High Court under article 133.
 1098. Difference between order granting leave and certificate, effect
 1099. Court immediately below—Meaning of
 1100. Affirmance and Variance, minor change will amount to variance, a variation as to costs not covered

- 1101. Tests as to valuation—value when to be determined according to plaint.
- 1102. Right of Appeal to be Governed from the date when lis commences.
- 1103. Remand order is not a final order
- 1104. Decision rendered in advisory or consultative Jurisdiction
- 1105. Whole appeals is before the Supreme Court

QUESTION OF LAW

- 1106. Inference from proved facts is not a question of law
- 1107. Construction of a documents is a question of law
- 1108. Appeal from judgments in second appeals interference when can be made
- 1109. Supreme Court not to interfere with the exercise of discretion
- 1110. Litigant has no right to be heard by specific number of Judges in appeals in High Courts

FINDING OF FACT WHEN CANNOT BE CHALLENGED

- 1111. Finding of fact, reason for not interfering in appeals
- 1112. Question of negligence when not allowed to be challenged
- 1113. Duty whether fairly duty or public duty
- 1114. Question regarding adoption
- 1115. Question as to good faith
- 1116. Collusive nature of transaction
- 1117. Dispute regarding parentage
- 1118. Relationship of master and servant
- 1119. Question as to sufficiency of evidence to record a finding
- 1120. Consent decree
- 1121. Concurrent finding of fact
- 1122. Nature of deed of Partnership
- 1123. Nature of Tenancy

FINDING OF FACT

WHEN ALLOWED TO BE CHALLENGED

- 1124. Exceptional Circumstances—What is
- 1125. Entries in *wajab-ul-urz* can be looked into
- 1126. When there is no concurrent finding
- 1127. Misreading of evidence
- 1128. Conclusions based on assumptions

NEW POINT WHEN CANNOT BE RAISED

- 1129. Point not taken in courts below
- 1130. New point which may require amendment of Pleading
- 1131. When there is no decision of the Courts below
- 1132. When not taken in writ petition to High Court
- 1133. Point not arising out of the order under appeal
- 1134. When pleading is sought to be changed
- 1135. Point not taken in statement of case
- 1136. Grounds disallowed by High Court
- 1137. When issue not framed

NEW POINT WHEN ALLOWED TO BE RAISED

- 1138. New point likely to arise in other cases allowed to be urged
- 1139. Point not taken in plaint but argued
- 1140. Stay cannot be granted which is to remain operative after the judgment
- 1141. Various assessment order challenged in one writ petition one Court fee is sufficient

CRIMINAL APPEALS BY CERTIFICATE

FROM HIGH COURT

(Article 134)

- 1142. General
- 1143. Acquittal—Does not mean complete acquittal
- 1144. Case—Meaning of
- 1145. Certify—Meaning of
- 1146. Writing leave granted not enough
- 1147. Certificate should give reasons
- 1148. Certificate should be given with great circumspection
- 1149. Certificate cannot be granted on the ground that points raised were not mentioned in judgment as there was delay in pronouncement of judgment
- 1150. Certificate cannot be granted merely because the bench hearing the appeal summarily dismisses it
- 1151. Certificate cannot be granted simply because the High Court feels that the case need further examination
- 1152. Judicial Commissioners cannot certify the case on the ground that there is no division bench to dispose off the case
- 1153. Certificate should be granted only when there is substantial question

- 1154 Certificate defective—Special leave can be given
- 1155 Certificate not to be granted merely on a question of fact
- 1156. Except onial circumstances, what are
- 1157. Plea of alibi not properly considered certificate may be granted
- 1158. Concurrent finding of fact
- 1159 Finding as to conspiracy
- 1160 Evidence not to be reassessed
- 1161 Certificate granted—Finding of fact even if not concurrent may not be upset
- 1162. Reasons for coming to a finding of fact not to be gone into
- 1163 Inference not based on evidence court may interfere
- 1164 Supreme Court may go in to a question of fact if there is no concurrent finding
- 1165 Grievance that some witnesses were not examined not made before the High Court Ground cannot be urged in High Court
- 1166 Additional grounds when can allowed to be urged
- 1167 Evidence may be reassessed in appeal where defence version appears to be correct
- 1168 Argument that points were raised but not considered by High Court allegations of this type not to be encouraged
- 1169 Supreme Court not to interfere with the sentence-passed unless there are exceptional circumstances
- 1170 Sentence of fine—Appeals do not abate, but other appeals abate
- 1171 Criminal case against a Government servant—Merely because legal representatives may get salary does not give them a right to continue the appeal after the death of accused
- 1172. War diaries are admissible in evidence
- 1173 State can appeal against the order of acquittal
- 1174 Detention order revoked during the pendency of appeal—New order passed—Detention can still be examined when legal questions are involved

APPEALS BY SPECIAL LEAVE

(Article 136)

- 1175 General
- 1176 Article 136 is not subject to any statute

1177. Scope of Article 136-Supreme Court is not a regular Court of Appeal
1178. Scope of article 136 in proceedings arising out of application under Article 227
1179. Scope of Article 136 does not depend on the order granting leave
1180. Scope of Article 136 in appeals arising out of article 226
1181. Every decision of an authority required to act-judicially is not subject to appeal under article 136
1182. No failure of Justice-Article 136 cannot be invoked
1183. Certificate by High Court cancelled special leave granted
1184. Decisions of Privy Council may be useful while exercising power under Article 136
1185. Special leave when to be granted if the procedure laid down in a statute is sought to be by passed
1186. Attempt to mislead the Court-Leave may not be granted and if granted may be revoked
1187. Reason for dismissal of application special leave need not be given
1188. Pondicherry before merger not covered
1189. Territory of Nizam before 26-1-1950 not territory of India
1190. Determination and Order, meaning of
1191. Administrative and judicial decision, distinction
1192. Tribunal and Court compared
1193. Central Board of Revenue is not a Court
1194. Central Board of Revenue is Tribunal
1195. Central Government exercising power under Companies Act is a Tribunal
1196. Central Government exercising power under mineral Rules acts as Tribunal
1197. Conciliation officer is not tribunal within the meaning of article 136
1198. Duty to act judicially does not clothe the authority with judicial power of State
1199. Appeals by special leave against the award of tribunal-Scope
1200. Argument can be allowed to be raised by respondent in support of judgment on ground decided against him on special leave
1201. Leave can be revoked

- 1202. Leave obtained in violation of mandatory provisions can be revoked
- 1203. Leave cannot be revoked if the parties are left remedyless
- 1204. Interference when to be made under Article 136 when finding of fact is involved
- 1205. Finding of fact if can be challenged
- 1206. Exceptional circumstances
- 1207. Inadequacy of evidence to reach a finding is not a question of law
- 1208. Interference in second appeals when to be made
- 1209. Finding of fact recorded under section 66 of the Income Tax Act
- 1210. Finding as to material effect on election cannot be challenged
- 1211. Mixed question of law and fact
- 1212. All evidence not considered finding of fact may be interfered with
- 1213. Additional evidence cannot be led
- 1214. Evidence is not to be considered under Article 136
- 1215. Evidence not to be reviewed except in exceptional circumstances
- 1216. Question likely to arise in other cases allowed to be raised
- 1217. New point if can be disposed on the basis of evidence on record may be raised
- 1218. Interlocutory orders may be challenged
- 1219. Case not made out in the statement of case
- 1220. Similar decisions not challenged, becomes final but does not bar the Court to hear other cases
- 1221. Stale matters
- 1222. Order passed with in jurisdiction, Court should be slow to interfere
- 1223. Adjournment not granted, article 136 if apply
- 1224. Elections matter and article 136
- 1225. Misdescription in the heading of special leave, is not fatal
- 1226. Order without jurisdiction cannot be sustained
- 1227. Leave of High Court should be obtained before asking special leave—Delay to be explained
- 1228. Certificate may not be obtained if the practice of the High Court so permits
- 1229. Allegations made by affidavits, Court not to interfere with the findings
- 1230. Costs
- 1231. Question of jurisdiction when can be raised
- 1232. Discretion exercised by Courts below not to be interfered with

1233. Technical defects—Respondent not properly described does not make an appeal incompetent
1234. Order made on a question of law under article 226 not taken to Supreme Court, case tried on merits, award given, matters settled under article 226 become final
1235. Party obtaining decree for divorce from High Court should not remarry till the period for special leave expires
- 1235A. What is error of law
1236. Exercise of discretion not to be interfered with
1237. Industrial Award, when to interfere
1238. Circumvention of ordinary procedure when allowed
1239. Exercise of advisory jurisdiction—Court not to travel beyond it
1240. Power under Article. 136 can be exercised only when invoked.
1241. Decision of appellate tribunal under income tax can be challenged under article 133
1242. Real controversy not appreciated case remanded
1243. Allegation of malafide cannot be made for the first time in special leave application
1244. Delay in making applications for special leave not to be condoned ex-parte
1245. Hypothetical question not to be decided
1246. Scope of Article 136 in criminal matters
1247. Fresh opinion about the guilt if can be formed
1248. Evidence not to be scrutinised unless there is failure of justice
1249. Interference in matters of sentence
1250. Criminal appeals when abate
1251. Appeal against jury-verdict, scope of interference narrow
1252. Conviction based on circumstantial evidence, principles governing
1253. Cases of professional mis conduct
1254. Cases under Corruption Act
1255. Review
1256. Advisory jurisdiction
1257. Rule making power
1258. Binding Nature of decision

1059. General.

The Supreme Court is the highest Court in the land and with the coming of this Court, judicial link with England has come to an end. The Court has been given wide powers original as well as appellate. In some case the appeal lies from the High Court of as right when a certificate is issued by High Court and in other cases when leave is granted by the Supreme Court itself. The scope of the jurisdiction is given in following paras.

1060. Court of Record.

(See para 1030)

1061. Contempt of Court

A threat given to a party which may cause the other party to withdraw from the litigation will also amount to contempt. Where a threat was issued in the nature of a circular that disciplinary action would be taken against the Government servant if he took recourse to Courts of law without exhausting the departmental remedies available, it was held that this amounted to contempt of Court : *Partap Singh v. Gurbaksh*, A. I. R. 1962 S. C. 1172. Where an order is issued where by an authority is prohibited from doing a certain act and that authority commits a breach of that order, it will be a case of contempt. But the necessary element which should be present is that the order should have been served on the authority concerned. Similarly, it is contempt of Court where the inferior Court desobeys the order of the superior court in an intentional and wilful manner : *Hoshiar Singh v. Gurbachan Singh*, A. I. R. 1962 S. C. 1089 : *Roy v. State of Orissa*, A. I. R. 1960 S. C. 1367.

Similarly, a direction given by an administrative authority to Magistrate that it should ignore the orders by a superior court would amount to contempt of court : *Rizal-ul-Hassan v. State of Uttar Pradesh*, 1953 S. C. R. 581. A reasonable opportunity, however, must be afforded before a person is punished for the offence of contempt of Court : *Sukhdev Singh Sodhi v. Chief Justice*, 1954 S. C. R. 454.

Any act done or writing published the purpose of which is to bring a Court into contempt or in other words where the object is to scandalise the Court, restrictions can be imposed on the right conferred by article 19 (1) (a). The object is not only to protect the Judges but also to protect the public at large from the harm which may accrue if the reputation of the Courts is impaired : *Brahm Prakash v. State of Uttar Pradesh*, 1963 S. C. R. 1169. Where a party to an appeal in the Supreme Court distributed leaflets in the premises of the Court in which it was alleged that the Government acted with partiality in the matter of appointment of the Judges, it was held that no protection can be afforded to the person concerned by article 19 (1) (a) : *Hiralal v. State of U.P.*, A. I. R. 1954 S. C. 743.

ORIGINAL JURISDICTION

(Article 131)

1062. General

The original jurisdiction of the Supreme Court is limited by the conditions laid down in article 131. Under article 131 the original jurisdiction can be exercised where the dispute is between Government of India and one or more States or between the Government of India and any State on the one side and one or more States on the other. Similarly, if there is dispute between two States that can also be entertained by the Supreme Court. The proviso which is attached to this article refers to disputes arising out of any treaty, agreement, covenant engagement, sanad

or other similar instruments which having been entered into or executed before the commencement of the Constitution. Dispute regarding this, how ever cannot be entertained by the Supreme Court.

In addition to this the Supreme Court has been given original jurisdiction under Article 32, where it can entertain and issue writs as specified in that article. The scope of this power is given in the chapter relating to writs.

1063. Power of Supreme Court to go into the competency of acts of accessions.

The accessions and the acceptance of them by the Dominion of India were acts of State into whose competency no municipal court could enquire, nor can any court in India, after the Constitution, accept jurisdiction to settle any dispute arising out of them because of Articles 363 and the proviso to Article 131; all they can do is to register the fact of accession and nothing else. But it is within the competence of the new sovereign to accord recognition to existing rights in the conquered or ceded territories and by Legislation or otherwise to apply its own laws to them; and when the occasion arises must be examined and interpreted by the municipal courts of the absorbing States: *Verendra v. State of U.P.* A.I.R. 1954 S. C. 445. In the case of *State of Sraikella v. Union of India* 1951 S. C. R. it was held that Supreme Court cannot have jurisdiction over a matter involving disputes regarding instrument of accession entered into between the Government of India and native States.

APPELLATE JURISDICTION

1064. General

Articles 132 to 136 of the Constitution deals with the appellate jurisdiction of the Supreme Court. Article 132 deals with appeals on constitutional questions whether by a certificate granted by the High Court or by a special leave granted by the Supreme Court under the relevant provision of article 132. Article 133 deals with appeals involving civil matters and article 134 deals with appeals involving criminal cases. Under articles 133 and 134 if other conditions as laid down in these articles are fulfilled and a certificate is granted by the High Court then the Supreme Court can entertain the matter. However, if a party is not given a certificate under article 133 or 134, Supreme Court can grant special leave under article 136 of the Constitution.

CONSTITUTIONAL APPEALS

(Article 132)

1065. General.

Under article 132, appeals involving interpretation of the Constitution arising out of any proceedings, whether civil criminal or otherwise in a High Court can be entertained by the Supreme Court if the High Court certifies that the appeal involves a substantial question as to the interpretation of the Constitution. This certificate is issued under clause 1 of article 132. However, if no certificate is issued by the High Court, the aggrieved party can seek special leave under article 132 (2), Constitutional appeals have been given a special treatment irrespective of the nature of the proceeding in which they arise: *Election Commission v. Venkatas, A.I.R. 1953 S.C. 210.*

1066. Judgment.

Judgment is the formal expression of an adjudication which so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matter in controversy in the suit. Where the jurisdiction of the Court is merely advisory or consultative, there is no judgment. Thus where a case is referred under a statute for the opinion of the Court it cannot be called a judgment : *Prem Chand v. State of Bihar*, 1950 S.C.R. 759.

Judgment must be a decision pronounced by a Court in a cause which it hears on merits : *Hans Kumar v. Union of India*, A. I. R. 1958 S. C. 947. Thus the order of a Court in a proceeding for filing an arbitration award is not a judgment. The decision given by the Court in its advisory function, for example answering certain questions under a law relating to Sales Tax or when a reference is made under the Income Tax Act cannot be called judgments : *Commissioner of Income Tax v. Patel & Co.*, A. I. R. 1960 S. C. 278. An order remanding a case for retrial is not a judgment within the scope of article 132 or 133 : *Jetha Nand v. State of Uttar Pradesh*, A. I. R. 1961 S. C. 794.

1067. Final order

A final order is one which settles the matter finally and brings the proceedings to an end. The order must by a final determination bringing the rights of the parties by its own force to an end : *Prem Chand v. State of Bihar*, 1950 S. C. R. 799. Thus a remand order does not dispose of a case and cannot be called a final order; *Jetha Nand v. State of Uttar Pradesh*, A. I. R. 1961 S. C. 794. Where an order finally disposes of the matter, the mere fact that the operation of the order is limited to a certain period will not prevent the order from being final : *State of Orissa v. Madan Gopal*, 1-62 S. C. R. 28.

An order deciding a preliminary issue cannot be called a final order : *Taker Saifuddin v. State of Bombay*, A. I. R. 1958 S. C. 253.

1068. Other Proceedings

The words other proceedings signify the scope of article 132 which is very wide. The case involving election matters would be covered by the term 'other proceedings' : *Election Commission v. Venkata*, 1953 S. C. R. 1144.

1069. Scope of Article 132 is very wide

Where the High Court has refused to give a certificate under Article 132 (1) the Supreme Court may if it is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution, grant special leave to appeal from such judgment, decree or final order. Under clause (2) of Article 132 there is no scope for granting a special leave unless two conditions are satisfied : Firstly the case should involve a question of law as to the interpretation of the Constitution ; and secondly the said question should be a substantial question of law. The principle underlying the Article is that the final authority of interpreting the Constitution must rest with the Supreme Court. With that object the Article is freed from other limitations imposed under Articles 133 and 134 and the right of appeal of the widest amplitude is allowed irrespective of the nature of the proceedings in a case involving only a substantial question of law as to the interpretation of the Constitution : *State of J. & K. v. Ganga Singh*, A. I. R. 1961 S. C. 356.

1070. Interpretation of Constitution—Meaning of

What does interpretation of a provision means. Interpretation is the method by which the true sense or the meaning of the word is understood. The question of interpretation can arise only if two or more possible constructions are sought to be placed on a provision. But where the parties agree on the true interpretation of a portion or do not raise any question in respect thereof, it is not possible to hold that the case involves any question of law as to the interpretation of the Constitution : *State of J. & K. v Ganga Singh*, A. I. R. 1961 S. C. 356.

1071. Interpretation of Article 14 is well settled

On an interpretation of Article 14 the Constitution a series of decisions of the Supreme Court evolved the doctrine of classification. As at no stage of the proceedings either the correctness of the interpretation of Article 14 or the principles governing the doctrine of classification were questioned by either of the parties and indeed where the parties accepted the said doctrine it was held that the question does not involve interpretation of Constitution. Where for the first time the appeal raised a new fact regarding of the doctrine of equality, namely whether an artificial person and a natural person have equal attributes within the meaning of the equality clause and therefore the case involves a question of interpretation, it was held that the question involves the same contention in a different garb. If analysed the argument only comes to this ; as an artificial person and a natural person have different attributes, the classification made between them is valid. This argument does not suggest a new interpretation of Article 14 of the Constitution but only attempts to bring the rule within the doctrine of classification, and it cannot be said that the question raised in this case involves any question of law as to the interpretation of the Constitution. The interpretation of Article 14 in the context of classification has been finally settled by the Supreme Court and under Article 141 of Constitution ; that interpretation is binding on all the Courts within the territory of India. What remains to be done by the courts below is only to apply that interpretation to the facts before it. A substantial question of law therefore cannot arise where that law has been finally and authoritatively decided by the Court : *State J. & K. v. Ganga Singh* A. I. R. 1961 S. C. 356.

1072. Substantial question as to the Interpretation of this Constitution.

A question which is settled by the previous decisions of the Court is no longer a substantial question. Where a decision is given by the Federal Court regarding a provision of the Government of India Act, 1935, the position will be the same: *State of Jammu & Kashmir v. Ganga Singh*, A.I.R. 1960 S. C. 356. A suit or other proceedings challenging a statute as unconstitutional or inconsistent with the provisions of the Constitution will be a question involving constitutional interpretation: *Behrabināra v. State of Assam*, A.I.R. 1966 S. C. 503 ; *State of Assam v. Ramesh*, A.I.R. 962 S. C. 107; *Hari Vishnu v. Ahmad*, A.I.R. 1955 S. C. 233. The question whether any law, executive order or a custom contravenes any fundamental right or not will also be a question involving constitutional interpretation : *Ganpati v. State of Bihar*, A.I.R. 1955 S.C. 188; *Budhan v. State of Bihar*, A.I.R. 1955 S. C. 191.

1073. Scope for difference of opinion does not raise a substantial question of law.

The question whether a certificate under article 132 has been properly granted or not involves a substantial question of law as to the interpretation

of the Constitution but the question whether a person has been afforded a reasonable opportunity of showing cause against dismissal or not and the High Court having come to the conclusion that no reasonable opportunity was given to the person concerned, it cannot be called a substantial question of law regarding the interpretation of article 311. Simply because there are grounds for dissenting or not dissenting with the view taken by the lower Court will not make a question a substantial question of law when it primarily involves a finding of fact: *State of Mysore v. H. L. Chhablani*, A.I.R. 1958 S. C. 325.

1074. Case may not be referred to five Judges under article 145 if no constitutional question is involved.

Where it was not necessary to express any opinion on the wider question in regard to the scope and amplitude of article 226 of the Constitution, namely whether the jurisdiction of the High Court under the said Article to quash the orders of Administrative tribunals is confined only to circumstances under which the High Court of England can issue a writ of certiorari or is much wider than the said power, because appeal could satisfactorily and effectively be disposed of with in the narrow limits of the ambit of writ of certiorari as understood in India it was held that there is no need to refer the matter to 5 judges. 'If it is necessary to tackle the larger question, the case may be referred to a Bench of 5 judges as it would then involve a substantial question of law as to the interpretation of the Constitution and under Article 145 thereof such a question can be heard only by a Bench of at least 5 Judges. But under the circumstances it was not found necessary to refer the matter under Article 145. *K. M. Shanmugam v. S. R. V. S.*, A.I.R. 1981 S. C. 1629.

1075. Civil proceedings-Proceedings for the recovery of tax is a civil proceedings.

Under Article 132 of the Constitution of India an appeal lies from any judgment decree or final order of a High Court in a civil, criminal or other proceedings, if the High Court certifies that the case involves substantial question of law as to the interpretation of the Constitution. The expression civil proceedings has not been defined in the Constitution nor it has been defined in the General Clauses Act. The expression would cover all proceedings in which a party asserts the existence of a civil right conferred by Civil law or by a statute and claims relief for the breach thereof. There is no warrant for the view that from the category of civil proceedings it was intended to exclude proceedings relating to or which seek relief against the enforcement of taxation laws. The object of taxation laws is to collect revenue for the governance of the State or for providing specific services and such a law directly affect the civil right of a tax payer. If a person is called upon to pay tax when the State is not competent to levy or which is not imposed in accordance with or in the levy, assessment and collection of which rights of the tax payer are infringed in any manner not warranted by statute & proceeding to obtain relief whether it is from the tribunal set up by the taxing statute or from civil court would be a civil proceedings. The character of the proceeding depends not upon the nature of the tribunal which is invested with the authority to grant relief but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceedings is one in which a person seeks to remedy by a appropriate process the alleged infringement of his civil rights against another person or the State and which if the claim is proved would result in the declaration express or implied of the right claimed and relief such as payment of debt ; damages ; compensation ;

delivery of specific property enforcement of personal rights determination of status etc. A proceeding for relief against infringement of civil right of a person is a civil proceeding even if the infringement be in purported enforcement of a taxing statute. There is no ground for restricting the expression civil proceeding only to those proceeding which arise out of civil suits in proceedings which are tried as civil suits. There is no rational basis for excluding proceedings under Article 226 from the scope of Civil proceedings: *Naryan Rao v. Iswer Lal*, A. I. R. 1965 S. C. 1818: 1965 2 S. W. R. 416.

1076 Certificate and order granting leave at variance—Matters not covered by the order allowed to be raised

Where the certificate issued by the High Court was in general terms but the order passed on the application seeking certificate did not cover the whole case the, the Supreme Court after excusing the delay granted special leave to appeal regarding the matter not covered by order made on the application seeking the certificate. The Court came to the conclusion that the parties were misled by the certificate issued by the High Court which was worded in general terms. When the certificate was looked at it appeared as if it pertained to the whole case and when the order which was passed on the application seeking the certificate was looked at it appeared that the Court intended to restrict the the certificate to specific case. In these circumstances, the court granted special leave regarding matters not falling under the terms of the order: *Chanda Mohan v. State of U. P.*, A. I. R. 1968 S. C. 1897.

1077. Obiter observations should be avoided specially under article 132.

In dealing with constitutional matters it is necessary that the decision of the Court should be confined to the narrow points which a particular proceeding raises before it. Often in dealing with the very narrow point raised by a writ petition wider arguments are urged before the Court but the court should always be careful not to cover ground which is strictly not relevant for the purpose of deciding the petition before it. Obiter observations and discussion of problems not directly involved in any proceeding should be avoided by courts in dealing with all matters brought before them but this requirement becomes almost compulsive when the Court is dealing with constitutional matters: *Naresh v. State of Maharashtra*, A. I. R. 1967 S. C. 7

1078. Certificate under Article 132 may be limited.

Under article 133 the High Court cannot issue a limited certificate but the position is different so far as article 132 is concerned. Under Article 132 of the Constitution where the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution; and where such a certificate is given any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court on any other ground: *Chandrase Khara v. Kulandaiavelu*, A. I. R. 1963 S. C. 199.

1079. Appeal from single Judge does not lie under Article 132 when there is no constitutional question.

The fact that an appeal lies to the Supreme Court from the order of a single judge of the High Court where the High Court certifies under Article 132 of the Constitution, that the case involves a substantial question of law as

to the interpretation of the Constitution does not mean that even appeals involving sections 195 & 476-B, I. P. C are also competent to the Supreme Court. It cannot be said that an appeal ordinarily lies from all matters to the Supreme court from the judgment of a single judge of a High Court because such an appeal lies with a certificate granted under Article 132 : *Narain Dass v. State of Uttar Pradesh and others*, A. I. R. 1961 S. C. 181.

NEW POINT

1080. New point cannot be allowed to be raised.

In the petition filed in the High Court certain pleas were not raised and no relief was claimed regarding them. The question was never mooted before the High Court and the respondent had no opportunity of meeting the claim sought to be made in the appeal. It was said that whereas the assessing officer has found that the appellant had lands in forty two villages in the inventory of properties submitted by the appellant to the Government only eighteen villages were set out and this inventory was accepted by the Government of India. Relying upon this premise, it was urged that the appellant is liable to pay tax in respect of his income from these eighteen villages and no more. But as this plea was never raised in the High Court and the Supreme Court refused to deal with it in the appeals as no evidence was led and no finding was given by the High Court on the issues : *Sudhansu-khar v State of Orissa*, A. I. R. 1961 S. C. 199.

1081. Point involving leading of evidence cannot be raised.

The question whether any special custom or special laws were prevailing in a particular State is a question of fact and cannot be allowed to be raised for the first time in a proceeding under article 132 of the Constitution before the Supreme Court. Where a question requires leading of evidence for its proper determination it would not be legitimate to allow the same to be agitated for the first time in the Supreme Court : *Jagan Nath v. Hari Har Singh*, A. I. R. 1958 S. C. 236.

1082. Point not taken in grounds of appeal.

A point which is not raised and is not taken in the grounds of appeal cannot be allowed to be raised before the Supreme Court. Where the question raised was whether a person had waived his right in a departmental enquiry and this point was not taken in the grounds of appeal against the order passed under article 226, the question was not allowed to be taken up during the arguments : *State of U. P. v. Mohd. Nooh*, A. I. R. 1958 S. C. 86.

1083. A point not raised in High Court cannot be argued in High Court.

A point which is not raised in High Court cannot be allowed to be raised in Supreme Court in an appeal under Article 132 of the Constitution of India. The limited question which was raised in High Court in a writ petition under Article 226, was that product in question was a medicinal preparation. This point was considered and rejected by the High Court. The point which was sought to be raised in Supreme Court was that the product in question is not an essential commodity within the meaning of Section 3 of the Essential Commodities Act 1955. This question being new was not allowed to be raised in the Supreme Court : *Hamidat Duakhana v. Union of India*, A. I. R. 1955 S. C. 1176.

1084. Specific averment not made in writ petition before High Court, Supreme Court cannot interfere.

Where the High Court exercised its discretion judiciously, after taking into consideration all the facts urged in support of the prayer for setting aside the abatement, the Supreme Court refused to interfere in the matter in an appeal under Article 132: *Union of India v. Shree Ram*, A.I.R. 1965 S.C. 1531.

CIVIL APPEALS BY CERTIFICATE

(From High Court)

(Article 133)

1090. General.

Article 133 of the Constitution provides for appeals in Civil matters under certain conditions laid down in Article 133. Thus the appeal will lie where the High Court certifies that the amount or value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or that the case is fit one for appeal to the Supreme Court; and where the judgment decree or final order appealed from affirms the decision of the Court immediately below in any case other than a case referred to in Sub-Clause (c) if the High Court further certifies that the appeal involves some substantial question of law.

1091. Article 133 is prospective.

The provisions of Article 133 are prospective and the judgment, decree and final order from which an appeal is competent must be from a High Court in the territory of India and which is established under the Constitution. The jurisdiction of the Supreme Court will not extend to a decision given by High Court on a date prior to the date of enforcement of the Constitution: *Daji Sahib v. Sheankar Rao*, A.I.R. 1956 S.C. 29.

1092. Judgment restoring the decree passed in 1946 is appealable

Where the judgment was passed by the Kerala High Court in the year 1956 the effect of which was to restore the decree of Travancore High Court passed in 1946, it was held that an appeal would lie under article 133 of the Constitution of India. Simply because the judgment which was given effect to was passed before the enforcement of the Constitution of India it cannot be said that the appeal under Article 133 is incompetent: *Moran Mar v. T. Paulo*. A. I. R. 1959 S. C. 31; 1959 S.C.R. 1309.

1093. Scope of Article 133 in appeals from judgments passed under Article 226

Where a writ petition is dismissed in limine and the dispute relates to a service matter, the scope of appeal under article 133 should be confined to the ambit of the writ petition in the High Court: *Gurbaksh Singh v. State of Punjab*, A. I. R. 1967 S. C. 502. It may be seen that the judgments rendered under Article 226 even if these relate to Revenue matters are civil proceedings and can be brought before the Supreme Court in Appeal under Article 133. The fact that the petition under

Article 226 is dismissed in limine will not alter the nature of the case : *Ramesh v. Geeta Lal*, A. I. R. 1966 S. C. 1445 ; *Narain Rao v. Ishwar Lal*, 1965 S. C. 1818.

1094. Scope of Article 133 cannot be restricted by a statute

The jurisdiction which is conferred on the Supreme Court to entertain appeals under Article 133 cannot be restricted by any other statute for example section 116(b) of the Representation of the People Act. Where the circumstances of the case justify the power of the Supreme Court to interfere and set aside the verdict of the High Court it cannot be curtailed by a statute : *Laliteshwar Prasad v. Bateshwar Prasad* A. I. R. 1966 S. C. 580 : 1966 2 S. C. R. 63.

1095. Certificate under Article 133 may not be obtained if the practice of the Court so permits

Where the practice of the High Court so permits it may not be necessary to seek a certificate from the High Court before coming to the Supreme Court. Where the Madras High Court was of the consistent view that no application for leave to appeal to Supreme Court lay before the High Court in matters involving revenue, the requirements of Order 13, Rule 2 of the Supreme Court Rules was dispensed with : *K. J. Khosla & Co. v. Deputy Commissioner of Commercial Taxes, Madras*, A. I. R. 1966 S. C. 1216 : 1966 S. C. D. 1140.

1096. Matters involving revenue is a civil proceedings even when brought before the High Court under Article 226.

Article 133 of the Constitution of India cover all proceedings as no exception is indicated in the Constitution. Where the High Court was invited to interfere by issuing a writ of certiorari and prohibition against the reopening of the case in which the Claims Officer had discharged a debt due to the answering respondent it was held to be a civil proceeding. The revenue authorities in such matters act analogously to civil Courts and have a duty to act judicially and they are to pronounce upon the rights of the parties. Such order will necessarily affect the civil rights of the parties. Any proceeding which may arise in High Court under Article 226 out of the revenue proceedings will be a civil proceeding. The same view was expressed in *Narain Rao v. Ishwar Lal, Bhagwan Dass*, A. I. R. 1965 S. C. 1818 by the Supreme Court. Civil proceedings mean proceedings in contradistinction to criminal proceedings and cover all proceedings which affect civil rights directly. The language used in Article 133 not only includes all judgments decrees and orders passed in the exercise of appellate and ordinary original civil jurisdiction but are wide enough to cover other jurisdictions under which civil rights would come before the High Court for decision which would necessarily include proceedings under Article 226 of the Constitution. Where a writ petition was dismissed in limine against the decision of the Commissioner in a revenue case, it was held that the decision is appealable as that decision finally settles the question of jurisdiction. A decision in limine being a final decision can be challenged under Article 133: *Ramesh v. Geeta Lal*, A. I. R. 1966 S. C. 1445: 1966 S. C. D. 1064.

1097. Limited certificate cannot be issued by High Court under Article 133.

Under Order XVI Rule 4 of the Supreme Court Rules where a party desires to appeal on grounds which can be raised only with the leave

of the Court the petition of appeal is to be accompanied by a separate petition indicating the grounds so proposed to be raised and praying for leave to appeal on those grounds and the petition shall unless the Court otherwise directs be heard at the same time as the appeal. Similarly under Order XVIII, Rule 3 (2) of the Rules the case lodged by a party is not to travel beyond the limits of the certificate or the special leave as the case may be and of such additional grounds if any as the Court may allow to be urged on application made for the purpose. These two provisions do not lay down that the High Court can issue a limited certificate but they assume that under certain circumstances it can do so. Article 133 of the Constitution does not empower the High Court to limit the certificate to any particular point. If the decree of the High Court is one of affirmance the High Court has to certify that the appeal involves a substantial question of law; and it has been the practice of some of the High Courts to state the substantial question of law in the certificate itself. Once the certificate is issued and the appeal is properly presented before the Supreme Court, the entire appeal is before the Court. But this will not entitle the parties to raise new points : *Chander Shekhar v. Kulandavelu*, A. I. R. 1963 S. C. 193.

1098. Difference between order granting leave and certificate, effect.

Where the certificate was issued in general terms and when the certificate was looked at it appeared the certificate related to the entire case but when the order which was passed on the application seeking certificate was looked at it appeared that the leave was granted only regarding a limited portion. The Supreme Court held that as the parties were misled by the certificate, the portion which was not covered by the order was allowed to be taken up after special leave was granted after condoning the delay: *Chander Mohan v. State of U. P.*, A.I.R. 1966 S. C. 1987 : 1966 All. L. J. 778.

1099 Court immediately below—Meaning of

The words "Court immediately below" occurring in article 133 of the Constitution must mean the Court from the decision of which an appeal has been filed to the High Court even if such Court is the single Judge of the High Court. This term cannot be equated with the words "Courts subordinate" as they are used in section 115 of the Civil Procedure Code. A Court subordinate to the High Court is a Court subject to the Superintendence of the High Court whereas a Court immediately below is the Court from whose decision the appeal has been filed. *Ladli Prasad v. Karnal Distillery* A.I.R. 1963 S. C. 1279. The same view was expressed in the case of *Durga Parsad v. Banarus Bank Ltd.* A.I.R. 1963 S.C. 1322 where it was held that the single Judge of a High Court is a Court immediately below a Bench hearing an appeal against his judgment under the letters patent. Where the judgment of such Bench affirms the judgment of the single Bench, an appeal under article 133 will not be competent unless the High Court certifies that the decision appealed involves substantial question of law. Thus the expression "Court immediately below" as it is used in article 133 does not mean Courts subordinate to High Court. A Court subordinate to High Court is subject to the superintendence of High Court whereas a Court immediately below is the Court from whose decision the appeal has been filed.

1100. Affirmance and Variance, minor change will amount to variance, variation as to costs not covered

The test of affirmance prescribed by article 133 can best be satisfied if the decree is taken in its entirety. It is a matter of comparing appellate decree with the decree of the Trial Court. If the appellate decree affirms the decree of the Trial Court, it is a decree of affirmance. If there is a variation made by the appellate decree in the decision of the Trial Court, the appellate decree is not a decree of affirmance and this position would not be affected whether the variation is made in favour of the intending appellant or against him and whether the variation made is minor or major. The words "judgment decreed or final orders appealed from" refers not merely to that part of the decree which is sought to be challenged in appeal but the entire decree from which the appeal arises or the decree giving rise to the appeal. The words "appealed from" are not words of limitations. They are merely descriptive and describe the decree as one from which appeal arises. Variance in the matter of costs only does not make a decree varying Trial Courts decree. The variance should be in regard to a matter of interest which will enable a party to claim the benefits of article 133: *T. Rajaram v. Radhakrishnaiah*, AIR 1961 S. C. 1795; 1962 1 S. C. A. 69.

1101. Tests as to valuation — Value when to be determined according to plaint.

An appeal under article 133(1) must satisfy two tests as to valuation. The amount or the value of the subject matter of the suit in the Court of first instance and the amount or value of the subject matter in dispute on appeal to the Supreme Court must both be above Rs. 20,000. Ordinarily the valuation in the plaint will determine the valuation for the purposes of appeal. A person who sets a lower value on a claim which he is required to value according to the real cannot be permitted to change it subsequently because this would amount to approbation and reprobation. But in a case where the plaint is not required to be valued, a question may arise as to the proper value of the plaint. This would cover the real value of the property which is required to be determined quite apart from the valuation given in the plaint. In a redemption case where the Court came to the conclusion that the value is above Rupees 20,000, it was held that the certificate is properly granted: *Kunju Keshavan v. M. M. Phillip*, AIR, 1964 S.C. 164.

While determining the valuation in a suit for the purposes of article 133, the value is to be determined in accordance with the plaintiff's case as found in the plaint. Where the question was whether the property in question is private or public, leave cannot be refused on the assumption that the property being public temple cannot be valued. *T. D. Gopalan v. Commissioner for Hindu Religions and Charitable endowments*, AIR 1966 S. C. 1935; 1966 S. C. D. 1166.

1002. Right of Appeal to be governed from the date when its commences.

Where the valuation of the suit is Rupees 10,000 and the suit was filed before the Constitution there vested a right of appeal in the parties on that date and the parties are to be governed by the law as it prevailed on that day. The parties acquired a right to go up in an appeal if unsuccessful to

the High Court and then to the Federal Court and it is wrong to say that the language of article 133 of Constitution of India takes away impliedly the right of appeal. The right of appeal is vested right and such a right accrues to the litigant and exists as and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of institution of the suit or proceedings and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. The vested right of appeal can be taken away only by a subsequent enactment if it so provides expressly or by necessary intendment and not otherwise. The right of appeal is not a mere matter of procedure but is a substantive right. Thus where the value of the valuation of the suit was Rs. 10,000 and an appeal was competent to the Federal Court, it will still be competent to the Supreme Court under Article 133: *Garika Patti v. N. Subia Chowdhary*, A.I.R. 1957 S.C. 540; 1957 S.C.R. 488.

1103. Remand order is not a final order.

An order is final within the meaning of article 133 (1) (c) if it amounts to a final decision relating to the rights of the parties in dispute in the civil proceedings. If after the order the proceedings still remain to be tried and the rights in dispute between the parties have to be determined the order is not a final order within the meaning of article 133. Where in an appeal against an order refusing to set aside the award the High Court merely remanded the case for *denovo* retrial in exercise of its inherent powers under section 151 C.P.C. holding that there was no proper trial of the petition, the order of remand cannot be called a final order within the meaning of article 133 (1) (c) of the Constitution. It is not possible to grant a certificate even under section 109 (1) (c) of the C.P.C. because of the amendment of Civil Procedure Code by Act 66 of 1955. The decision given by the Privy Council in *Abdul Rehman v. D. K. Casim and sons*, 60 Indian Appeals 76 which was relied by the High Court while granting the certificate was held to be of no assistance. An observation made by the High Court which may raise a question of law of great public or private importance justifying grant of certificate under article 133 (1) (c) will not be of much use when the case is being remanded because the whole of the matter is to be tried again: *Jethanand v. State of U.P.*, A.I.R. 1961 S.C. 795.

1104. Decision rendered in advisory or consultative jurisdiction cannot be challenged in Appeal under article 133.

Where the question of law which was referred to the High Court and on which the decision was given, was in the exercise of the advisory or consultative Jurisdiction under the Snarashtra Income Tax Ordinance, it was held that the provisions of article 133 are not applicable and a certificate could not be granted by the High Court: *Income Tax Commissioner v. Patel and Co*, A.I.R. 1960 S.C. 279 1959 (37) I.T.R. 412.

1105. Whole appeal is before the Supreme Court.

Under article 133 of the Constitution the certificate issued by the High Court in the manner prescribed therein is a pre condition for the maintainability of an appeal to the Supreme Court. But the terms of the Certificate do not circumscribe the scope of the appeal i.e. to say once a proper certificate is granted the Supreme Court has undoubtedly the power as a Court of appeal to consider the correctness of the decision appealed

against from every stand point, whether on question of fact or of law. It is open to the successful party to question the maintainability of the appeal on the ground that the certificate was issued in contravention of the provisions of article 133 of the Constitution. But once the certificate is held to be good, the provisions of article 133 cannot be given an interpretation which will narrow down the scope of the appeal to the certificate; *Raghavamma v Chenchamma*, A.I.R. 1964 S.C. 136.

A certificate given by the High Court cannot be limited to any particular point. The entire case is before the Supreme Court when certificate is granted by the High Court; *Chandrasekar v. Kulandairvelu*, A.I.R. 1963 S.C. 115.

QUESTION OF LAW

1106. Inference from proved facts is not a question of law.

An inference from proved facts cannot be a question of law. The question whether the consent of the successful candidate to the commission of corrupt practice as required by section 101 (b) of the Representation of the People Act, 1951, is there or not and when there is a concurrent finding of the High Court and the Election Tribunal that there was no such consent either express or implied, it cannot be said that the question becomes a question of law: *Sarat Chander v. Khagendra Nath*, A.I.R. 1962 S.C. 334. Reference may also be made to the case of *Siri Minakshi Mills Ltd. v. Commissioner of Income Tax, Madras*, 1956 S.C.R. 691 where it was held that a finding of fact even when it is an inference from other facts found on evidence is not a question of law and that such an inference can be a question of law only when the point for determination is a mixed question of law and fact.

1107. Construction of a document is a question of law.

The construction of a document of title or of a document which is the foundation of the rights of the parties necessarily raises a question of law. The proper test for determining whether a question of law raised in the case is substantial or not would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by the highest Court of the land or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

Where a document involves the construction of the managing agency agreement, it is one of law as it is neither simple nor free from doubt. It was held that the refusal on the part of the High Court to grant certificate was wrong: *Chhni Lal v. C. S & M. Co Ltd.*, A.I.R. 1962 S.C. 1314; 1962 I Lab L. J. 653; *State of J & K v. Ganga Singh* A.I.R. 1961 S.C. 356.

Where the question is as to what inference should be drawn from the facts proved or admitted relating to the change of sovereignty it will be a question of law and not of fact: *State of Maharashtra v. Mohi. Abdullah*, A.I.R. 1962 S.C. 445; 1962 S.C.R. 970.

1108. Appeal from judgment in second appeals, interference when can be made.

Under article 133 of the Constitution no appeal lies to the Supreme Court from the judgment decree or final order of single Judge of a High Court unless it is shown that in allowing a second appeal the single Judge contravened the limits prescribed by section 100 of the C. P. C. The practice of the Supreme Court is not to encourage special leave against the decisions of the High Court rendered in second appeal but where a person can show that judgment delivered by a single Judge of the High Court goes beyond the limits prescribed by section 100 of the Civil Procedure Code, 1908 the Supreme Court will not reject the claim for special leave: *Ramappa v. Bojappa*, A.I.R. 1963 S. C. 1633.

1109. Supreme Court not to interfere with the exercise of discretion.

Where the High Court has exercised its discretion properly the Supreme Court will not interfere in the matter. Though the bar contained in order 2 rule 2 of the Civil Procedure Code may not apply to a petition for a high prerogative writ under article 226 of the Constitution but where discretion has been exercised and the salary prior to the institution of the suit is disallowed the Supreme Court will not interfere in the discretion exercised by the High Court: *Devendra v. State*, A.I.R. 1962 S. C. 1334; 1962 1 Lah.L. J. 266.

1110. Litigant has no right to be heard by specific number of Judges in appeals in High Courts.

Right of appeal to High Court does not mean that a party is entitled to be heard by a specific number of judges. When an appeal lies to a High Court whether it is heard by one, two or a larger number of judges, it is merely a matter of procedure. No party has a vested right to have his appeal heard by a specific number of judges. Where the appeal in question is in fact heard and disposed of by the High Court a party can make no grievance of the fact that it was heard by a single judge and not by a Division Bench. The Supreme Court relied while giving this decision on an earlier decision in *Itavara v. Barkey*, 1964 1 S. C. R. 495: *Mohd. Meera v. Thirumalaya*, A.I.R. 1966 S.C. 430; 1966 1 S.C.R. 574.

1111. Finding of fact reason for not interfering in appeals.

Article 133 of the Constitution does not in any way limit the scope of an appeal provided a proper and valid certificate is issued by the High Court thereunder. The Supreme Court may review a concurrent finding of fact arrived at by the lower Courts in appropriate cases, but following the practice of the Privy Council the Supreme Court does not normally interfere under article 133 when the question involved is a question of fact. The reason for the practice is that when facts have been fairly tried by two Courts and the same conclusion has been reached by both the Court, it is not in the public interest that the facts should be examined again by the final Court of appeal. This practice is fairly crystallised and the Supreme Court does not normally interfere with the concurrent finding of fact except in exceptional cases where the findings are such as shocks the conscience of the Court or where by disregard to the forms of legal process or some violation of some principles of natural justice or otherwise substantial and grave injustice has been done. The Supreme Court did not elaborate what these circumstances are and held that this must be left to the discretion of the Court. *Raghavamma v. Chanchamma*, A.I.R. 1964 S.C. 136.

FINDING OF FACT WHEN NOT ALLOWED TO BE CHALLENGED

1112. Question of negligence

Where there was a concurrent finding of fact to the effect that the fire caused was due to the direct negligence of the Railway Administration, it was held that this finding cannot be challenged in the Supreme Court : *Union of India v. West Punjab Factories*, A. I. R. 1966 S. C. 395; 1964 I S. C. R. 105.

1113. Deity whether family deity or public deity.

The Supreme Court will not normally interfere in a finding of fact recorded by the courts below especially when the finding is concurrent.

The question whether a deity is a family deity in which the public has no interest and the properties or the gifts made to that deity will constitute a religious and chaitable endowment of a public nature is a finding of fact in which the Supreme Court will not interfere under article 133. Even a mistaken inference from a document, will constitute a finding of fact which the courts normally will not interfere with : *Narain Bhagwant Rao v. Gopal Vinayak Goswami*, A. I. R. 1960 S. C. 100 ; 1960 S. C. R. 773.

1114. Question regarding adoption.

The question whether there is adoption according to law is a question of fact. where the findings are given by the Courts below as to the factum of adoption, the Supreme Court will not interfere with such a finding : *Raghavamma v. Chenchamma* A.I.R. 1964 S.C. 136.

1115. Question as to good faith.

Where the question was whether a person had acted in good faith or not, it was held that the question is one of fact and does not call for interference by the Supreme Court : *T. P. Dasgupta v. Lodge Victoria*, A. I. R. 1963 S. C. 1145.

1116. Collusive nature of transaction.

The question whether a particular proceeding was collusive or not is essentially a question of fact and where the Court below have recorded a finding in the negative after going through the record it will not be proper for the Supreme Court to interfere in the matter : *Nago Bhai v. B. Sharma Rao*, A. I. R. 1956 S. C. 593.

1117. Dispute regarding parentage.

Where the question was whether a person was the son of Mr. R or not being a question of fact the Supreme Court did not interfere *amma-thayee v. Kumersan* A. I. R. 1967 S. C. 569

1118. Relationship of master and servant.

The question whether the relation between the parties is that of master and servant is a pure question of fact and it cannot be upset in a writ petition under article 226 of Constitution of India. Similarly, when a decision is given by an Industrial Tribunal, the Supreme Court exercising jurisdiction under article 133 of the Constitution of India will not interfere with finding of facts such as disclosed above; *D. C. Pvt. Ltd. v. State of Surashtra*, A. I. R. 1957 S. C. 264, 1957 S. C. R. 152.

1119. Question as to sufficiency of evidence to record a finding.

The question whether the evidence led before the Industrial Tribunal was sufficient or not and if believed would enable the Industrial Tribunal to come to the conclusion in favour of the appellant is not a question of law much less substantial question of law : *H. G. Mills v. Their Employees* A. I. R. 1957 S.C. 376.

To say that a finding is based on no evidence is very difficult to establish. Such a contention can succeed only when it is shown that there is no legal evidence in support of the view taken by the appropriate authorities. If the appropriate authorities give a concurrent finding after considering the circumstances it cannot be called a finding based on no evidence : *Bhatnagar's & Co. Ltd. v. Union of India* A. I. R. 1957 S. C. 481.

1120. Consent decree.

Where the question is whether a transaction is in substance a loan and when there is consent decree passed on it, it becomes a question of fact and the Supreme Court is unable to disturb such a finding of fact : *Radha Kishan v. Keshor Deo*, A. I. R. 1957 S. C. 743, 1957 S. C. J. 775.

1121. Concurrent finding of fact.

Where the High Court and the Deputy Commissioner came to the same conclusion the Supreme Court refused to interfere in the matter in an appeal brought under article 133 against the orders of the High Court passed under article 226: *A. M. Altsent v. B. L. Sen*, A. I. R. 1957 S. C. 227 1957 S. C. R. 359.

1122. Nature of deed of Partener ship.

The usual practice is that the Supreme Court does not interfere with the concurrent finding of fact. Where the Courts on the evidence both direct and circumstantial came to the conclusion that the partnership agreement was entered into with the object of carrying on wagering transactions and there was no intention to ask for delivery and the intention was only to deal with the difference the Supreme Court refused to interfere in the matter on the ground that there is a concurrent finding: *Ghero Lal v. Mahadeo Dass*, A.I.R. 1959 S. C. 781, 1959 (2) S.C.A. 342.

1123. Nature of Tenancy.

Similarly where the question was whether the appellant is a heiriditary tenant or not and when there was concurrent finding on the point the Supreme Court refused to interfere in the matter: *Dhimcha v. Chanan Singh*, A.I.R. 1959 S.C. 960, 1959, ALLJ, J. 557.

FINDING OF FACT

WHEN ALLOWED TO BE CHALLENGED

1124. Exceptional circumstances, What are.

Where there is a concurrent finding of fact the Supreme Court refused to interfere in the matter. The fact that the Supreme Court does not agree with the reasons given by the Courts below will not make the circumstance as an exceptional circumstance justifying interference in the matter: *Durafatti Venkata v. T. Ramaswami and Co.*, A. I. R. 1963 S.C. 818.

The Supreme Court will not interfere with the finding of fact recorded by the Courts below : *Sobhraj v. State of Rajasthan*, A.I.R. 1963 S.C. 640 But in a case where the High Court on an identical issue came to a different conclusion, the Supreme Court examined the finding of fact recor-

ded by the Courts below : *Vishwanathan v. Abdul Majid*, A.I.R. 1960 S. C. 1. Similarly in the case of *Narasimharaju v. Gurmurthi*, the Court observed that though normally it would not interfere with the findings of facts yet in exceptional circumstances, where the judgment of the High Court showed that it had not considered the relevant evidence bearing on the point and the conclusion reached by the Court was on erroneous consideration, the Supreme Court examined the matter and reversed the finding of fact recorded by High Court.

1125. Entries in *wajah-ul-urz* can be looked into.

The question whether from the *Wajah Ul-Urz* entries any inference of surrender or relinquishment of a sovereign right by the Government can be properly drawn is not a pure question of fact depending as it does on the true scope and legal effect of those entries. The Supreme Court cannot by resorting to short cut relieve itself of the task of examining of *Wajah ul-urz* entries and considering true scope and legal effect : *Rajinder Chand v. Musmad Sukhi*, A.I.R. 1957 S.C. 236, 1956 S.C.R. 889.

1126. When there is no concurrent finding.

Where there is no concurrent finding of fact, the Supreme Court will allow the parties to place the whole of the evidence before it to enable the Court to give its own finding after appreciating the rival contention placed before the Court : *Captian J. A. Cleive v. A. K. Chatterjee*, A.I.R. 1959 S. C. 597, 1952 S.C.A. 581.

Where the Courts below reached opposite conclusion on the fact of Lunacy the Supreme Court went into the evidence and heard arguments and gave a decision as it was held not to be a question of fact ; *Nuthamal v. Sri Subramania Swamy*, A.I.R. 1960 S.C. 601; 1962 S.C.R. 721.

1127. Misreading of evidence.

Where the conclusion of a High Court is based partly on the misreading of the evidence and partly on the non advertance to important material evidence bearing on the question and the probabilities of the case, the Supreme Court will interfere in the matter after examining the evidence brought on the record; *Moran Mar v. T. Paulo* A.I.R. 1959 S.C.R. 1309.

1128. Conclusions based on assumptions.

Where the judgment of the High Court was based on some statements or assumptions which were not warranted by the facts, the Supreme Court held that it can consider the entire evidence on the record and arrive at its own conclusion on the consideration of evidence: *Abdul Shakur v. R. G. Papparao*, A.I.R. 1963 S. C. 1150.

NEW POINT WHEN CANNOT BE RAISED

1129 Point not taken in courts below

A point which is not taken in the Courts below cannot be allowed to be taken for the first time in the Supreme Court. The plea that it was not a fit case in which specific performance of contract should be allowed, was not taken in the Courts below and it was not allowed to be taken up in an appeal under article 133 in the Supreme Court. *Mrs. Chaddani Vidyawati v. C. L. Katial*, A.I.R. 1964 S. C. 978.

1130 New point which may require amendment of Pleadings cannot be allowed to be raised-case, cannot be remanded

Where the pleadings in a writ proceeding are of vague character and require to be amended before any decision can be given, the Supreme Court will not allow this to be done. It is not possible to allow the parties to argue on a new plea and remand the case for determination to the Courts below. The pleas raised in regard to discrimination under article 14 were of the vaguest character, the facts necessary to sustain the plea were not given in detail and were not brought on the record. The prayer made before the Supreme Court was that the case should be remitted back to the High Court for the consideration of the matter involving alleged breach of article 14 of the Constitution. The Court was of the opinion that for the proper determination of the issues raised it would be necessary to amend the petition which the Court declined to do but allowed the parties to file new petition if so advised: *State of Rajasthan v. Ram Saran*, A.I.R. 1961 S. C. 1361.

1131. When there is no decision of the Courts below

A new point is not allowed to be urged on the ground that there is no decision on the point by the Courts below: *State of Orissa v. Durga Charan Dass*, A.I.R. 1966 S. C. 1547.

Where the interest of a certain person devolved on the Government and it was urged that government should be considered to be substituted in place of that person in land acquisition proceedings, the point was not allowed to be taken up before the Supreme Court as this point was not urged in the High Court: *Grant v. State of Bihar*, AIR 1966 S.C. 237; 1966 S.C.D. 53.

1132. When not taken in writ petition filed in High Court

Where the ground urged was that the scheme was invalid because the objections to the scheme were heard and the scheme was approved by the Joint Secretary, Judicial Department who was not lawfully, invested with the authority in that behalf, it was not allowed to be taken up as it was not taken up in the writ petition out of which appeal under Article 133 cropped up: *Kalyan Singh v. State of U.P.*, A.I.R. 1962 S. C. 1183; 1963 1 S. C. J. 50.

A point which is not raised in a petition under article 226 of the Constitution of India before the High Court cannot be allowed to be taken up for the first time in the Supreme Court. In a Writ Petition where a Writ of Certiorari is prayed for it is not open to the parties to challenge the findings of fact arrived at by the authorities *Associated Cement Co. Ltd. v. P. D. Vyas*, A. I. R. 1960 S. C. 665, 1960 (2) S. C. R. 974.

A point which was taken up in the Writ Petition but was not argued cannot be taken up under Article 133 of Constitution of India. The fact that a ground is taken up in a general way in a petition and the judgment does not show that the point was taken up at all in the High Court because the judgment on the Writ Petition and the order on the application for certificate unambiguously shows that the point was not taken up in the High Court, the Supreme Court refused to interfere: *Ganeshi Ram v. District Magistrate*, A. I. R. 1967 S. C. 536.

The question as to what was the affect of the rules framed in 1941 under section 241 of the Government of India Act, 1935 was never raised before the High Court and was not allowed to be raised for the first time in the Supreme Court: *Gian Singh v. State of Punjab*, A. I. R. 1962 S. C. 219; 1962 S. C. R. 515.

1133. Point not arising out of the order under appeal

Where a question involved is a mixed question of law and fact, but is not taken up in the Courts below, it cannot be allowed to be raised for the first time in the Supreme Court : *T. V. V. Narasimham v. State of Orissa*, A. I. R. 1963 S. C. 1227. A question which does not arise out of the order under appeal cannot be raised in the Supreme Court : *Kishan Chaud v. Income Tax Commissioner, Bombay*, A. I. R. 1963 S. C. 390.

The plea that notification under section 6 of the Land Acquisition Act should be issued without unreasonable delay, was not specifically taken in the High Court and it was not allowed to be urged. *Girdhari Lal Amrit Lal v. State of Gujarat*, A.I.R. 1966 S. C. 1408 : 1966 S. C. D. 1053.

1134. When pleading is to sought be changed

A new point cannot be raised at the time of hearing. Where the appellant attempted to show that the properties which were granted to him were granted because he was serving the duty it was not allowed to be urged as this case was not made out in the Courts below and not even in the plaint filed, it was held that the appellant cannot be allowed to change his plea at the time of hearing : *Narayan Bhagwant Rao v. Gopal Vinayak Goswami*, A. I. R. 1960 S. C. 100 : 1960 S. C. R. 773.

1135. Point not taken in statement of case

A point which is not taken up in the statement of the case cannot be allowed to be taken up because the Supreme Court observed there may be more than one answer to the point urged by the respondents and had they practically raised it in a statement of the case, the appellant would have been in a position to give appropriate answer : *Rajinder Singh v. Deputy Custodian*, A. I. R. 1967 S. C. 145.

1136. Grounds disallowed by High Court

The grounds which were not allowed by the High Court to be taken up in the Writ Petition in the exercise of its discretion under Article 226 of Constitution of India cannot be allowed to be taken up in an appeal under Article 133 of Constitution of India. Where there was delay of 3 years in filing of the writ petition and where the High Court refused to interfere in the matter the Supreme Court also declined to interfere under Article 133 : *Ajit Singh v. State of Punjab*, A. I. R. 1967 S. C. 856.

1137. When issue not framed

The plea that the suit was barred under Order 9, Rule 9 Civil Procedure Code was not taken up in the trial Court and no issue was framed on the point and the Supreme Court did not allow the parties to urge that point. *Kesar Singh v. Balwant Singh*, A. I. R. 1967 S. C. 509.

NEW POINT WHEN ALLOWED TO BE RAISED**1138 New point likely to arise in other cases allowed to be urged**

Though normally the practice is that a new point is not allowed to be urged at the time of the hearing but if a question is of a considerable importance and might crop up in other similar suits which are pending, a party may be allowed to argue a new point. Here the contention which was raised was that certain provisions i. e. section 85 of the C. P. Muni-

city Act bar a suit for recovery of a tax wrongfully recovered by the Municipal Committee. This point was not urged before the Bombay High Court: *B. K. Bhandar v. Dhamagaon Municipality*, A. I. R. 1966 S. C. 249.

1139. Point not taken in plaint but argued

Where a point was not taken up in the plaint but was pointedly raised in arguments before the trial Court the Court allowed the parties to address arguments on that point: *Public Passenger Service Ltd. v. M. A. Khaddar*, A. I. R. 1966 S. C. 489; 1966 S. C. R. 683.

1140. Stay cannot be granted which is to remain operative after the judgment

In an appeal under Article 133 of the Constitution of India whereby an order passed under Article 226 is being challenged and where the question involved was the vires of Punjab Resumption of Jagirs Act, 1957, the Court observed that the question regarding as to what compensation and who should get the compensation is a matter which is foreign to its jurisdiction and for this reason the Supreme Court cannot give direction in judgment for staying payment of part amount for specified period though it had granted interim stay till the disposal of the appeal: *Amarsarjit Singh v. State of Punjab*, A. I. R. 1962 S. C. 1305.

1141. Various assessment order challenged in one writ petition, one Court fee is sufficient.

Where the case originated out of one petition under article 226 of the Constitution challenging the validity of various orders, it was held to be one proceeding and it cannot be said that there are as many proceedings as there are assessment orders. If an appeal is taken to Supreme Court from the judgment of the High Court it is sufficient if single set of Court fee is put. The decision given in the case of *Krishan Chand Chela Ram*, A. I. R. 1963 S. C. 390 was distinguished: *Chaneer Bhan v. State of Orissa*, A. I. R. 1967 S. C. 767.

CRIMINAL APPEALS BY CERTIFICATE

FROM HIGH COURTS

(Article 134)

1142. General.

Under Article 134 an appeal shall lie to the Supreme Court from any judgment, final order of sentence in a criminal proceedings of a High Court in the territory of India if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or certified that the case is a fit one for appeal to the Supreme Court.

The Supreme Court will not ordinarily do more than examine in cases arising under Article 134 whether the High Court has fairly considered a case to reach the conclusion that *prima facie* there is good reason to launch the prosecution and that there is reasonable prospect of conviction and that it is expedient in the interest of justice to order a prosecution: *Hari Dass v. State of Bengal*, A. I. R. 1962 S. C. 903.

1143. Acquittal does not mean complete acquittal, imposing lesser sentence may amount to acquittal

If the High Court reverses an order of acquittal of an accused person and sentences him to death, an appeal shall lie as of right to the Supreme Court under Article 134 (1)(a). The argument raised on behalf of the accused was that as the accused was acquitted of the offence of Section 302 I. P. C. and was convicted under Section 304 Part I, it was a case of reversing an order of acquittal. The argument on behalf of the State was that the word "acquittal" meant complete acquittal. The word "acquittal" does not mean that the trial must have ended in a complete acquittal of the charge but acquittal of the offence charged and conviction for a minor offence (than that for which the accused was tried) is included in the word "acquittal."

This view was expressed in a Judgment of the Judicial Committee of the Privy Council in *Kishan Singh v. Emperor*, 55 Ind. App. 390 : In that case an accused person was tried by the Sessions Judge under Section 302 of the Indian Penal Code on a charge of murder but was convicted under Section 304 for culpable homicide not amounting to murder. the Court having power to do that under Section 238 (2) of the Criminal Procedure Code. He was sentenced to five years rigorous imprisonment. No acquittal of the charge under Section 302 was recorded. There was no appeal to the High Court by the then local Government but it applied for revision under Section 439 on the ground that the appellant should have been convicted of murder and the sentence was inadequate. the High Court convicted the appellant of murder and sentenced him to death. On appeal to the Privy Council it was held that the finding of the trial Court was to be regarded as an acquittal on the charge of murder and that under Section 439 (4), Criminal Procedure Code the word "acquittal" did not mean complete acquittal. At P. 397 Sir Lancelot Sunderson observed :

"There Lordships, however, do think it necessary to say that if the learned Judges of the High Court of Madras intended to hold that the prohibition in Section 439, sub-Section, (4) refers only to a case whether the trial has ended in a complete acquittal of the accused in respect of all charges or offences, and not to a case such as the present, where the accused has been acquitted of the charge of murder, but convicted of the minor offence of culpable homicide not amounting to murder, their Lordships are unable to agree with that part of their decision. The words of the sub-section are clear and there can be no doubt as to their meaning. There is no justification for the qualification which the learned Judges in the cited case attached to the sub-section."

The Supreme Court agreed with the interpretation put on the word "acquittal" by the Judicial Committee of the Privy Council. The words "acquittal" does not mean that the trial must have ended in a complete acquittal but would also include the case where an accused has been acquitted of the charge of murder and has been convicted of a lesser offence. Under these circumstances an accused is entitled to a certificate under Article 134 (1) (a) as a matter of right : *Tarachand Damu Sutar v. State of Maharashtra*, A. I. R. 1962 S. C. 130.

1144. Case—Meaning of

In *Nar Singh's case* (1955) 1 S. C. R. 238, 24 persons were tried

under Sections 302/149, 307/149 and 148 Indian Penal Code and eight were convicted by the Court of Sessions. On appeal to the High Court five more were acquitted and that left Nar Singh, Roshan Singh and one Nathu Singh. Their convictions were upheld by the High Court and their sentences were maintained. What had happened in the case of Nathu Singh was that by a curious misreading of the evidence this Nathu Singh was mixed up with Bachan Singh. What the High Court really meant to do was to convict Bachan Singh and acquit Nathu Singh. Instead of that they acquitted Bechan Singh and convicted Nathu Singh. As soon as the learned judges of the High Court realised their mistake they communicated with the State Government and an order was there upon passed by that Government remitting the sentence mistakenly passed on Nathu and directing that he be released. All the accused applied for certificate and in view of what had happened and as the conviction of Nathu Singh on a murder charge was still subsisting a common certificate was granted to all of them. The High Court thought that the word "case" in Article 134 (i) (a) meant the case as a whole, Nathu Singh did not appeal and the appeal was filed by Nar Singh and Roshan Singh on the common certificate. The Supreme Court pointed out that the High Court was wrong in thinking that the word case as used in Article 134 meant a case as a whole and the certificate in relation to accused other than Nathu Singh was bad. The certificate to Nathu Singh was said to be proper. The Divisional Bench then considered the case under Article 136 (1) for special leave but found it unfit; *See Babu Singh v. State of U.P.*, A. I. R. 1965, S. C. 1467.

1145. Certify-Meaning of.

The word "Certifies" is a strong word. It indicates that the High Court must bring its mind to bear on the question and as in all cases of judicial orders and certificates the reasons for the order must be apparent on the face of the order itself. The Supreme Court must be in a position to know firstly that the High Court has applied its mind to the matter and not acted mechanically and secondly exactly what the High Court's difficulty is and exactly what question of outstanding difficulty or importance the High Court feels the Supreme Court ought to settle. It is not enough to say "leave to appeal is given" and no more because an appeal is not allowed in the ordinary way when conditions (a) and (b) are not satisfied. Accordingly merely to say that leave is given and no more is tantamount to saying that the High Court will usurp the functions of the Constitution makers and allow the whole case to be opened up despite the fact that the Constitution has specifically limited the normal right of appeal to sub-articles (a) and (b) and has left (c) to meet extraordinary cases: *Baladin v. State of U.P.* A.I.R. 1956 S. C. 181

1146. Writing leave granted not enough.

Where the High Court has merely said "leave to appeal to the Supreme Court is granted", it is impossible for the Supreme Court to gather what induced the High Court to grant this leave or what points of outstanding importance that require to be settled are in the opinion of the High Court involved. Where the High Court did not even certify that the case is a fit case for appeal, the certificate was held defective: *Baladin v. State of U.P.* A.I.R. 1956 S.C. 181

Similarly where the only question before the High Court was whether the circumstances disclosed in the evidence do or do not unmistakably point to the conclusion that the accused was the guilty person the certificate cannot be granted. If the High Court doubts about the guilt of the accused or experiences any difficulty in accepting the evidence, its duty is to acquit. If on the other hand the High Court finds that the evidence points to the guilt of the accused is clear, cogent and reliable it has no alternative but to dismiss the appeal and after this no further question of doubt or difficulty could arise. Where in the High Court's order in which the last sentence in the judgment appealed from was in these terms "leave to appeal to the Supreme Court has been asked for and is allowed" it was held that the certificate, is defective : *Sunder Singh v. State of U. P.* A.I.R. 1955 S.C. 411 at page 413.

1147. Certificate should give reasons

In *Om Parkash v. State of U. P.* Criminal Appeal No. 146 of 1956 the certificate was not accepted when no reason were given and similarly the certificate in *Haripada Dey's* case, 1956 S.C.R. 639 was also held to be bad because the reasons were not sound. Bhagwati J in *Haripada Dey's* case, 1956 S.C.R. 639 observed.

"Whatever may have been the misgivings of the learned Chief Justice in the matter of a full and fair trial not having been held we are of the opinion that he had no jurisdiction to grant a certificate under Article 134 (1) (c) in a case where admittedly in his opinion the question involved was one of fact, where inspite of a full and fair trial not having been vouchsafed to the appellants, the question was merely one of a further consideration of the case of the appellants on facts. The mere disability of the High Court to remedy this circumstance and vouchsafe a full and fair trial could not be any justification for granting a certificate under Article 134 (1) (c) and converting this Court into a Court of Appeal on facts. No High Court has the jurisdiction to pass on mere questions of fact for further consideration by this Court under the relevant articles of the Constitution."

The observations however were held to be too absolute to be a safe guide in the infinite variety of cases that come before the Courts. In the case of *Babu v. State of U.P.* A.I.R. 1965 S. C. 1467 it was said that it can only safely be said that under Article 134 (1) (c) the Supreme Court is not to be made an ordinary Court of Criminal Appeal and the High Court should not by the certificate attempt to create a jurisdiction which was not intended. The High Courts should therefore, exercise their discretion sparingly and with care. The certificate should not be granted to afford another hearing on facts unless there is some error of a fundamental character such as occurred in the case of *Babu v. State of U.P.*, A.I.R. 1965 S.C. 1467.

1148. Certificate should be given with great circumspection.

The third sub-clause of article 134 permits an appeal in cases, where the High Court certifies a case as fit for appeal. The sub clause does not state the conditions necessary for such certification. No rules under article 145 regulating generally the practice and procedure of the Supreme Court for the grant of certificate by the High Court have been framed. The power which is granted is no doubt discretionary but in view of the word "certifies" it is clear that such power must be exercised with great

circumspection and only in a case which is really fit for appeal. It is impossible by a formula to indicate the precise circumstances under which this power may be exercised. *Babu v. State of U. P.* A.I.R., 1965 S.C. 1467.

1149. Certificate cannot be granted on the ground that points raised were not mentioned in judgment or there was delay in pronouncement of judgment

The High Court should not grant a certificate on the mere ground of delay in pronouncing a judgment or on the equally slender ground that some of the questions which were raised were forgotten at the time of the judgment. If there is any such grievance it is open to the aggrieved party to apply to the Supreme Court under Article 136 but the mere ground of delay in giving a judgment is not a ground on which the High Court can certify a case to be fit one for appeal to the Court. A mere ground of delay in giving a judgment does not fall within the words "fit one for appeal to the Supreme Court" even if it is felt by the High Court that the delay might have led to omission to consider arguments on questions of fact and law. It is not open to a High Court to give certificates of fitness under this clause merely because in its opinion the judgment of the Court delivered by another Bench suffers from an error in regard to certain facts. The certificate was cancelled in this case: *Achyut Adhikary v. State of West Bengal*, A.I.R. 1963 S.C. 1039 *

1150. Certificate cannot be granted merely because the Bench hearing the appeal summarily dismisses it

There can be no doubt whatever that in dealing with criminal appeals, brought before the High Courts the Court should not summarily reject them if they raise arguable and substantial points of fact or of law. It is for the High Court which deals with the criminal appeal preferred before it to consider whether it raises any arguable or substantial question of fact or law, or not. Section 421 (1) of the Code provides that on receiving the petition and copy under section 419 or section 420, the appellate Court shall pursue the same and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily. The proviso to this section requires that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same. Sub-section 2 empowers the appellate Court to call for the record of the case before dismissing the appeal under sub-section 1 but it does not make it obligatory on the Court to do so. Therefore, the position under section 421 is clear and unambiguous. When a criminal appeal is brought before the High Court, the High Court has to be satisfied that it raises an arguable or substantial question; if it is so satisfied, the appeal should be admitted; if, on the other hand the High Court is satisfied that there is no substance in the appeal and that the view taken by the trial Court is substantially correct, it can summarily dismiss the appeal. A summary dismissal of the appeal does not mean that the High Court has not applied its

* See *Banarsi Parshad v. Kashi Krishna*, 28 Ind App 11 (PC) and *Radhakrishna v. Srinathakan*, 48 Ind App 31 where the Privy Council in construing Section 109 (c) of the Code of Civil Procedure pointed out that under that clause a certificate can be granted if a case involves question of great or wide public importance.

mind to all the points raised by the appellant. Summary dismissal only means that having considered the merits of the appeal, the High Court does not think it advisable to admit the appeal because in its opinion, the decision appealed against is right. A High Court is not right in granting certificate on the ground that appeal should not have been summarily dismissed by another Division Bench of the said High Court. If the High Court in dealing with criminal appeals takes the view that there is no substance in the appeal, it is not necessary that it should record reasons for its conclusion in summarily dismissing it: *Chittarnjan Das v. State of West Bengal*, A. I. R. 1963 S. C. 1696.

1151. Certificate cannot be granted simply because the High Court feels that the case needs further examination.

In *Haripada v. State*, 1956 S. C. R. 639, the appellant was convicted under section 411 Indian Penal Code and sentenced to two years rigorous imprisonment for dishonestly receiving and retaining a motor car which he had reason to believe was stolen. His appeal was dismissed and he applied for a certificate and according to the practice of the Calcutta High Court the petition was placed before another Bench. The Chief Justice who was one of the judges constituting the Bench passed an elaborate order and observed:

"In my view a certificate of fitness ought to issue in this case, although the question involved is one of fact.

In my view it is impossible not to feel in this case that there has not been as full and fair a trial as ought to have been held. In the circumstances, it appears to me that the petitioner is entitled to have his case further considered and since such further consideration can only be given by the Supreme Court, I would grant the certificate prayed for".

As the Chief Justice himself said the question involved was one of fact, the Supreme Court did not approve of the certificate and held that it was no certificate at all: *See Babu v. State*, A. I. R. 1963 S. C. 1467.

1152. Judicial Commissioners cannot certify the case on the ground that there is no Division Bench to dispose of the case.

If in any particular State there is only one Judicial Commissioner as the ultimate appellate authority and if the confirmation of sentence of death has to be made by him, the procedure laid down must be followed. The fact that there is not a Bench of two judges as in the High Court to deal with death sentences is not an adequate ground for converting the Supreme Court into an ordinary Court of appeal and confirmation in such matters: *Kalawati v. Himachal Pradesh*, A. I. R. 1953 S. C. 131.

1153. Certificate Should be granted only when there is substantial question of law.

Sub-clause (c) of article 134 does not confer an unlimited jurisdiction on the High Courts. The power gives a discretion but discretion must always be exercised on some judicial principles. The mere questions of fact should not be referred for decision as the Constitution does not contemplate a criminal jurisdiction for the Supreme Court except in the cases covered by clauses (a) and (b) of article 134, which provide for appeals as of right. The High Court before it certifies the

case must be satisfied that it involves some substantial question of law or principle. In a criminal appeal the High Court can consider the case on law and fact and if the High Court entertains doubt about the guilt of the accused or the sufficiency of the evidence it can always give the benefit to the accused there and then. It is obvious that only a case involving something more than mere appreciation of evidence is contemplated by the Constitution for the grant of a certificate. What that may be will depend on the circumstances of the case but the High Court should be slow to certify a case. The High Court should not overlook that there is a further remedy by way of special leave which may be invoked in cases where the certificate is refused: *Babu v. State of U. P.*, A. I. R. 1965 S. C. 1467 at page 1472.

1154. Certificate defective—Special leave can be given.

Where the certificate was defective, it is open to the Supreme Court to grant special leave. Having regard to the circumstances of the case, as special leave would have been granted if the appellant had the occasion to file such an application, the Supreme Court granted special leave in the case: *Pershad v. U. P. State*, A. I. R. 1957 S. C. 211

QUESTION OF FACT

1155. Certificate not be granted merely on a question of fact.

The objection raised was that the appeal was not maintainable as the High Court had granted a defective certificate. In the High Court when the opinion of the third Judge had been pronounced the Court proceeded to dismiss the appeal and at that stage an oral application was made for a certificate to appeal to the Supreme Court. It is was observed by the Supreme Court.

"The High Court might have thought that in granting the certificate as a part of its order in the appeal before it, the points arising in the appeal apparent on the face of the judgment of the learned Judges, might be regarded as the grounds upon which the certificate was granted. In any event, even if the certificate was defective, it is open to this Court to grant special leave. We think that this is a case in which having regard to the circumstances of the case, special leave would have been granted if the appellant had the occasion to file such an application and we grant special leave assuming that the certificate granted in this case is defective."

Pershad v. U. P. State, A.I.R. 1957 S. C. 211 at page 213.

1156. Exceptional circumstance, what are.

The Supreme Court has pointed out in *Pritam Singh v. State*, A.I.R. 1950 S. C. 169, that it will not entertain a criminal appeal except in special and exceptional cases where by a violation of the principles of natural justice or otherwise substantial and grave injustice has been done. Where the accused was convicted notwithstanding the fact that the evidence is wanting on a most material part of the prosecution case, the Court examined the evidence on the ground that there existed exceptional circumstances: *Mohinder Singh v. the State*, A. I. R. 1953 S. C. 415.

1157 Plea of alibi not properly considered certificate may be granted.

Ordinarily the Supreme Court will not look beyond the findings of fact arrived at by the Courts below, but where the decision on the plea of alibi has been arrived at in disregard of the principle that the standard of proof which is required in regard to that plea must be the same as the standard which is applied to the prosecution evidence and in both cases it should be a reasonable standard; The Supreme Court interfered in the matter: *Mohinder Singh v The State*, A.I.R. 1953 S.C. 415

1158 Concurrent finding of fact.

Both the trial Court and the High Court recorded that the deceased had died as a result of burns caused by the fire set to her clothes by the husband who had sprinkled kerosene oil on her. This was supported by the dying declarations against the correctness of which no cogent reasons were given or suggested and a conviction based on such evidence was held to be sustainable: *Khushal Rao v. State of Bombay*, 1958 S.C.R. 552. *Tara Chand Damu Sutar v. State of Maharashtra*, A.I.R. 1962 S.C. 130

It is the usual practice of the Supreme Court to accept the concurrent findings of fact arrived at by the courts below : *Deep Chand v State of Rajasthan* A.I.R. 1961 S.C. 1527

1159. Finding as to Conspiracy.

Both the Special Judge and, on appeal the High Court accepted the evidence of a witness, as it was corroborated in material particulars by other acceptable evidence and these concurrently found that accused was a party to the conspiracy. The finding being one of fact the Supreme Court did not to interfere with the finding : *Major E. G. Barsay v. State of Bombay*, A.I.R. 1961 S.C. 1762 at page 1779.

1160. Evidence not to be reassessed

It was urged that the entire evidence with regard to recovery should be discarded as the police investigation in the case was not a straight forward one but was conducted in such a way as to raise suspicion that the police was deliberately trying to create some evidence of recovery against the accused persons. The Supreme Court refused to interfere as it was of opinion that it is not the function of Court to reassess evidence and on argument on a point of fact which did not prevail with the courts below in an appeal under Article 134 : *Lachhman Singh v. The State* A.I.R., 1952 S.C. 167 at page 169.

Where there is ample evidence which if believed can be used in support of the findings ; the Supreme Court will not interfere : *Mathew v. T. C. State*, A. I. R. 1956 S. 241 at page 246.

1161. Certificate granted finding of fact even if not concurrent may not be upset

It is wrong to say that it is open to the appellant to urge that he is entitled to question the findings of the High Court because the appeal is before the Supreme Court on a certificate and because the High Court had come to a different finding on a question of fact from what the trying Magistrate had found. A finding of the High Court on a question of fact may not be interfered with where the High Court gave very good reasons for accepting the evidence of the prosecution witnesses as to the circumstances in which the currency notes in question were recovered from the appellant when his person was searched : *Narayandas Bhagwan das v. State of West Bengal*, A. I. R. 1959 S. C. 1118 at page 1121.

1162. Reasons for coming to a finding of fact not to be gone into.

The Supreme Court is not a Court of criminal appeal and therefore need not examine the reasons of the High Court for coming to certain conclusions of fact. *C.S.D. Swami v The State*, A.I.R. 1960 S.C. 7

1163. Inference not based on evidence, court may interfere.

Although the Supreme Court will not interfere with the findings of the High Court because its conclusions on the evidence as to the guilt or innocence of the accused differ from that of the High Court, yet where the evidence is such that no tribunal could legitimately infer from it that the accused is guilty the Supreme Court would set aside the convictions: *Bhagwan Dass v State of Rajasthan*, A.I.R. 1957 S.C. 589 at page 591

The Judicial Committee of the Privy Council in *Stephens Seneviratne v The King* A.I.R. 1936 P.C. 289 in setting aside an order of conviction said "... .. there are here no grounds on the evidence taken as a whole upon which any tribunal could properly as a matter of legitimate inference arrive at a conclusion that the appellant was guilty"

But if there are no exceptional circumstance or unusual reasons which would induce the Court to re-examine the entire evidence on the point the Court may decline to interfere: *Venkato Mallayya v T. Ramaswami & Co.*, A.I.R. 1964 S.C.818.

1164. Supreme Court may go into a question of fact if there is no concurrent finding

In an appeal on a certificate where the findings on question of fact are not concurrent the Supreme Court can form its own conclusions irrespective of the grounds given by the High Court or grounds given by the lower Court for believing or disbelieving evidence of a witness: *Mohd. Dastagir v. State of Madras*, A. I. R. 1960 S. C. 756.

1165. Grievance that some witnesses were not examined, not made before the High Court, ground cannot be urged in High Court

The point urged on behalf of the accused was that in the trial, he was not given an adequate opportunity to produce his defence evidence and this happened for no fault on his part. When the case came before the High Court no grievance was made about non-examination of any witness. The Supreme Court held it too late for the accused to make a fresh grievance in the Supreme Court: *Bakkish Singh v. State of Punjab*, A. I. R. 1967 S. C. 752

The question that proper sanction for launching prosecution was not given was not raised in High Court and was not put to the witness who gave evidence to prove the sanction. If the point had been expressly put to the witness, he would have either given evidence himself on that point or would have adduced other evidence to show that the sanction was proper. The Supreme Court did not allow the plea to be raised for the first time in the Supreme Court.

A question of fact which has to be investigated afresh cannot allowed to be raised for the first time in appeal: *Rameshwar Bhartia v. State of Assam*, A. I. R. 1952 S. C. 405 at page 406.

1166. Additional grounds when allowed to be urged

In the grounds of appeal to the Supreme Court and in the statement of case the appellants raised various grounds not raised in Courts below and also filed a petition for leave to urge these additional grounds.

It was held that grounds additional to those urged before the High Court would not be permitted to be raised before the Supreme Court as a matter of course and that petitions for such purpose would not be granted save in exceptional cases. It has to be noticed that in hearing and dealing with additional grounds the Court is handicapped in not having the advantage of the opinions of the High Courts on the points urged. It is the correctness of the decisions of High Courts that is sought to be challenged in appeals and it is but proper that the correctness of these judgments should, save in exceptional cases like for instance subsequent legislation or questions of fundamental and general importance etc., be assailed only on grounds urged before such Courts. Besides, when among the grounds thus urged, is included a violation of Article 14 of the Constitution the handicap is accentuated since the material facts on which the classification might rest can not be properly investigated or evaluated on the basis of the affidavits filed in the Court without a careful sifting of the facts which a consideration by the High Court would afford. In the appeal before the Court, the Court departed from this rule and permitted the appellants to urge the additional grounds because of the circumstance that the prosecution was pending and learned counsel submitted that he would seek to sustain his contention regarding the violation of fundamental rights on the materials already on record : *Bhagwati Saran v. State of U. P.*, A. I. R. 1961 S. C. 928

1167. Evidence may be re-assessed in appeal where defence version appears to be correct

The Supreme Court examined the evidence at length in the case not because with a desire to depart from the usual practice of declining to re-assess the evidence in an appeal, but because there was in the case a departure from the rule that when an accused person put forward a reasonable defence which is likely to be true and in addition is supported by two prosecution witnesses then the burden on the other side becomes all the heavier because a reasonable and probable story likely to be true when pitted against a weak and vacillating case is bound to raise reasonable doubts of which the accused must get the benefit *Hale Singh v. State of M. B.*, A. I. R. 1953 S. C. 463

1168. Argument that points were raised but not considered by High Court-Allegations of this type not to be encouraged.

The contention that a number of arguments on facts brought to the notice of the Hon'ble Judges were not considered was not allowed to be raised and the court deprecated the growing practice of making such allegations against the High Courts. Where the judgment is fairly long and considered and where it appears to take note of arguments on questions of fact and law, it is not necessary that the judgment should record and repeat each individual argument however hollow. If any material point does not come under scrutiny, the fact should be brought to the notice of the High Court before the judgment is signed and an order of the High Court on such submission obtained before it is raised in appeal. The Supreme Court will ordinarily regard the details of the argument given in the judgment of the High Court as correct and will not enter upon an enquiry as to what was or was not there. To permit points to be mooted on the plea that they were raised before the High Court but were not considered by it would open the door to endless litigation and this would be destructive of the finality which must attach to

the decision of the High Court on matters of fact. The High Court is a Court of Record and unless an omission is admitted or is demonstrably proved the Supreme Court will not consider an allegation that there is an omission: *Bashiruddin v. B. S. S. Majlis Awaqf* A.I.R. 1965 S. C. 1206.

1169. Supreme Court not to interfere with the sentence passed unless there are exceptional circumstances.

It is the settled rule of the Supreme Court that it would not interfere with the sentence passed by the courts below unless there is any illegality in it or the same involves any question of principles. The facts of the case before the court presented some unusual features and the Court had to technically interfere with the sentence of one year's imprisonment passed by the Chief Presidency Magistrate. The respondent was sentenced by the Presidency Magistrate on April 24, 1963 and thereupon he started serving the sentence till the judgment of the High Court which was rendered on December, 10, 1963. The respondent was released the next day i. e. December 11, 1963. The Supreme Court granted special leave on December 20, 1963 and thereafter an application was made by the appellant State. The Supreme Court directed the arrest of the respondent. The respondent was accordingly arrested and though the Magistrate directed his release on bail pending the disposal of the appeal in the court, the respondent was unable to furnish the bail required and hence suffered imprisonment, though it he noticed that such imprisonment was not in pursuance of the conviction passed on him by the Magistrate. Such imprisonment continued till May 8, 1964 when the decision of the Supreme Court was pronounced so that virtually the respondent had suffered the imprisonment that had been inflicted on him by the order of the Presidency Magistrate. In these circumstances, the Court was directed that though the appeal was being allowed the sentence would be reduced to the period already undergone which was only a technical interference with the sentence passed by the Presidency Magistrate, though in substance it was not: *State of Maharashtra v. M. H. George*, A.I.R. 1965 S.C. 722.

1170. Sentence of fine-Appeals do not abate but other appeals abate.

The revision petitions or some appeals from sentences of fine might be continued by the legal representatives on the death of the accused pending the proceeding: *Pranab Kumar Mitra v. State of West Bengal*, (1959) Supp (1) S.C.R. 63. It appears that in England appeals from similar sentences are permitted to be continued by the executors of the deceased appellant: *See Hodgson v. L. Lakeman*, 1943 1 K.B. 15. It is true that Section 431 Criminal Procedure Code cannot be said to apply to the case arising under the Constitution proprio vigore, all the same appeal from sentences of fine may be permitted to be continued by the legal representatives of the deceased appellant because if it can be continued when arising under the Code, there is no reason why they should not be continued when arising under the Constitution. If revision petitions may be allowed to be continued after the death of the accused so should appeals, for between them no distinction in principle is possible for the purposes of continuance. It is true that the Code of Criminal Procedure which creates revisional powers of a Court provides that such powers may be exercised *suo moto* but it does not seem that *Pranab Kumar Mitra's* case, (1959) Supp. 1 S. C. R. 63; A. I. R. 1959 S.C. 144 was based on this for on that ground all revision cases should have been permitted to be continued and the permission should not have been confined to cases of

fine. Indeed in that case the Supreme Court proceeded on the basis that there was no statutory provision applying to the case. It was observed: "Even in the absence of any statutory provision, we have held, that the High Court has the power to determine the case even after the death of the convicted person, if there was a sentence of fine also imposed on him, because that sentence affects the property of the deceased in the hands of his legal representatives."

A sentence of fine affects property and it is immaterial that the case is taken further up in appeal or in revision. If it is just and proper to continue the hearing in one case after the death of the accused, it would be equally so in the other case.

The principle on which the hearing or a proceeding may be continued after the death of an accused would appear to be the effect of the sentence on his property in the hands of his legal representatives. If the sentence affects that property, the legal representatives can be said to be interested in the proceeding and allowed to continue it: *Bandoada Gajpath Rao v. State*, A.I.R. 1964 S.C. 1645.

1171. Criminal case against a Government Servant, merely because legal representatives may get salary does not give them a right to continue the appeal after death of accused.

It may be possible that if the sentence is set aside that may assist the legal representatives in their effort to obtain the full salary to which the deceased's estate would have been entitled. But the effect of the sentence imposed in the case being set aside would not directly entitle the legal representatives to the salary. They will have to obtain necessary orders from the Government for the purpose. The setting aside of conviction will not automatically follow the necessary orders from the Government. For these reasons the Supreme Court held the case does not require that the legal representatives of the deceased convict should be permitted to continue the appeal.

The decision given in *Pranarishi's Case*, (1959) Supp (1) Supreme Court Reports 63 : and *Pritam Singh v. State*, 1950 S.C.R. 453 were distinguished. It was held that on a parity of reasoning in these cases the legal representatives could not carry on the appeal in the case of *Bandoada Gajpathi Rao*. The question whether in the absence of any direct injury to the living, every criminal proceedings must come to an end after the death of the accused whether before his conviction or after was not decided but it was held that there must always be some discernible reason for permitting another person to continue an appeal whether civil or criminal after the death of the appellant. An appeal is not a heritable asset and does not devolve as a matter of course upon an executor or an heir. Even under the Civil law an express provision is required for substitution of an other person in the place of the person deceased before the appeal can be continued and this again is subject to whether the cause of action survives or not. The same principle is again to the fore front in section 451 Criminal Procedure Code when it allows an appeal in respect of fine to be continued but not appeals involving imprisonment. The intention there too appears to be to afford only those persons a right whose interests are directly jeopardized by the judgment. In so far as personal punishment (other than a fine is concerned), that stands dissolved by the death of the offender and an appeal to get that punishment set aside becomes infructuous and abates: *Bandoada Gajpathi v. State* A.I.R. 1964 S.C. 1645.

1172. War diaries are admissible in evidence.

The judgment of the High Court upholding the conviction of the appellant was challenged on the ground that that Court based its findings on certain War Diaries which were inadmissible in evidence. The War Diaries were held to be admissible and it was held that it was no ground for interfering under Article 134: *Bakshish Singh v. State of Punjab*, A. I. R. 1967 S. C. 752.

1173 State can appeal against the order of Acquittal.

In *State Government, Madhya Pradesh v. Ramu Krishna Ganpatrao Limsey*, A. I. R. 1954 S. C. 20, the Supreme Court made certain observations which are likely to create an impression that an application for a certificate would be incompetent in regard to cases where an order of conviction passed by the trial Court has been set aside by the High Court on appeal. The said case had come to the Supreme Court under Article 136 by special leave and on the merits the Court came to the conclusion that no case had been made out for interference by the Court with the order passed by the High Court which was under appeal. Though the matter arose under Article 136, even so the Supreme Court referred to Article 134 and observed that Article 134 does not provide for an appeal from a judgment, final order, or sentence in a criminal proceeding of a High Court if the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal.

Reliance was placed on Section 417 of the Criminal Procedure Code, and it was held that order of acquittal is final subject to Article 136 of the Constitution.

But the sweep of the relevant words used in Article 134(1) (c) being very wide it is hardly necessary to look for any separate provision in the Constitution which would correspond to S. 417 Criminal Procedure Code.

In *Shantiranjana Majumdar's Case* Cri. Appeal No. 21 of 1960 dated 14-9-1964 S. C. the Supreme Court was again dealing with an application brought before it under Article 136 by special leave and 'inconsidering the merits of the appeal, incidentally, reference was made to the earlier decision of the Court in *Limsey's case*, A. I. R. 1954 S. C. 20 (Supra) and it was observed that the order of acquittal made by the High Court is final subject however to the over riding powers of the Court under Article 136 of the Constitution.

Both these Cases were considered in *State of U. P. v. R. B. Aggarwal* A. I. R. 1966 S.C. 1135 and dissented from.

The true legal position which emerges now as a result of the decision in *R. B. Aggarwal's case* A. I. R. 1966 S.C. 1135 is that if an accused person is convicted by the trial Court and on appeal to the High Court, his conviction is set aside, the State is entitled to apply to the High Court for certificate under Article 134 (1) (c). Such an application cannot be rejected in limine on the ground that it is incompetent, it has to be entertained and considered and decided on the merits: *State of U. P. v. R. B. Aggarwal*, A.I.R. 1966 S.C. 1135 at page 1137. Similar observations were made in the case of *State of Punjab v. Shadi Lal* A. I. R. 1960 S. C. 397.

fine. Indeed in that case the Supreme Court proceeded on the basis that there was no statutory provision applying to the case. It was observed: "Even in the absence of any statutory provision, we have held, that the High Court has the power to determine the case even after the death of the convicted person, if there was a sentence of fine also imposed on him, because that sentence affects the property of the deceased in the hands of his legal representatives."

A sentence of fine affects property and it is immaterial that the case is taken further up in appeal or in revision. If it is just and proper to continue the hearing in one case after the death of the accused, it would be equally so in the other case.

The principle on which the hearing or a proceeding may be continued after the death of an accused would appear to be the effect of the sentence on his property in the hands of his legal representatives. If the sentence affects that property, the legal representatives can be said to be interested in the proceeding and allowed to continue it: *Bandoada Gajpal Rao v. State*, A.I.R. 1964 S.C. 1645.

1171. Criminal case against a Government Servant, merely because legal representatives may get salary does not give them a right to continue the appeal after death of accused.

It may be possible that if the sentence is set aside that may assist the legal representatives in their effort to obtain the full salary to which the deceased's estate would have been entitled. But the effect of the sentence imposed in the case being set aside would not directly entitle the legal representatives to the salary. They will have to obtain necessary orders from the Government for the purpose. The setting aside of conviction will not automatically follow the necessary orders from the Government. For these reasons the Supreme Court held the case does not require that the legal representatives of the deceased convict should be permitted to continue the appeal.

The decision given in *Pranami's Case*, (1959) Supp (1) Supreme Court Reports 63 : and *Pritam Singh v. State*, 1950 S.C.R. 453 were distinguished. It was held that on a the parity of reasoning in these cases the legal representatives could not carry on the appeal in the case of *Bandoada Gajpal Rao*. The question whether in the absence of any direct injury to the living, every criminal proceedings must come to an end after the death of the accused whether before his conviction or after was not decided but it was held that there must always be some discernible reason for permitting another person to continue an appeal whether civil or criminal after the death of the appellant. An appeal is not a heritable asset and does not devolve as a matter of course upon an executor or an heir. Even under the Civil law an express provision is required for substitution of an other person in the place of the person deceased before the appeal can be continued and this again is subject to whether the cause of action survives or not. The same principle is again to the fore front in section 431 Criminal Procedure Code when it allows an appeal in respect of fine to be continued but not appeals involving imprisonment. The intention there too appears to be to afford only those persons a right whose interests are directly jeopardized by the judgment. In so far as personal punishment (other than a fine is concerned), that stands dissolved by the death of the offender and an appeal to get that punishment set aside becomes infructuous and abates: *Bandoada Gajpalhu v. State* A.I.R. 1964 S.C. 1645.

may in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India. This Article applies to all matters whether civil or criminal.

PRELIMINARY

1176. Article 136 is not subject to any Statute.

The provisions of the Act of legislature are subject to the paramount law as laid down in the Constitution. Article 136 of the Constitution, under which the Supreme Court grants special leave to appeal cannot be read as subject to the provisions of the Act. The provisions of the Act of the legislature must be read subject to the over-riding provisions of Article 136 of the Constitution. Therefore whatever finality may be claimed under the provisions of the Act regarding any order passed under it, it must necessarily be subject to the result of the determination of the appeal by special leave : *I. G. Navigation & Rly Co., v. Their Workmen* A.I.R. 1960 S.C. 219.

Where the law provided that the decision of the tribunal shall be by the majority of the members sitting and shall be final it was held that this provision about the finality of the tribunal's decision cannot affect jurisdiction of Supreme Court under Article 136 of the Constitution : *Baigarh Jute Mills v. Eastern Rly*, A.I.R. 1958 S.C. 525.

1178. Scope of Articles 136-Supreme Court is not a regular Court of Appeal.

The Supreme Court is not a regular Court of appeal against the order of Tribunal. The scope of its power under Article 136 of the Constitution vis-a-vis awards of tribunals is stated in *Bengal Chemical and Pharmaceutical works Ltd, Calcutta v. Their Workmen*, 1959 Supp. (2) S. C. R. 136, where the Court observed :

"Article 136 of the Constitution does not confer a right of appeal to any party from the decision of any tribunal, but it confers a discretionary power on the Supreme Court to grant special leave to appeal from the order of any tribunal in the territory of India. It is implicit in the discretionary power that it cannot be exhaustively defined. It cannot obviously be so construed as to confer a right to a party where he has none under the law. The Industrial Disputes Act is intended to be as self-contained one and it seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration. Awards are given on circumstances peculiar to such dispute and the tribunals are, to a large extent free from the restrictions of technical consideration imposed on Courts. A free and liberal exercise of the power under Article 136 may materially affect the fundamental basis of such decision, namely, quick solution to such disputes to achieve industrial peace. Though Article 136 is couched in widest terms, it is necessary for this Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principles of natural justice causing substantial and grave injustice to parties or raising an important principle of industrial law requiring

1174. Detention order revoked during the pendency of appeal—A new order passed—Detention can still be examined when legal questions are involved :

An objection was raised on behalf of the State to the hearing of the appeals on the ground that the orders under which the detenus were detained and which were under consideration in the appeals had been revoked by the State Government and fresh orders of detention had been passed and in consequence the appeals had become infructuous. Reliance was placed on the decision of the Federal Court in *Keshav Talpade v. Emperor*, 1944 F. C. R. 57 ; A. I. R. 1944 F. C. 24. where the detenu was released during the pendency of appeal before the Federal Court. It was said before the Federal Court that even though the detenu had been released and no order could thereafter be made on the habeas corpus application the Court should pronounce an opinion on the correctness of the High Court judgment which the Federal Court refused to do and dismissed the appeal on the ground that no order in the appeal could be made after the release of the detenu. Generally speaking no useful purpose would be served by the appeal Court deciding the appeal in a habeas corpus matter where the detenu has been released before the appeal comes up for final hearing. But if the earlier order of detention which is under appeal has been revoked by the Government on the ground of a technical defect and a fresh order of detention is passed on the same date and the detenus were immediately re-arrested after their release from jail under the fresh order of detention there is no bar to hear the appeals on merits. In the Federal Court case the detenu was released on the same date leading to his re-arrest. In the present case though technically the detenus were released before the hearing of appeals but in substance they were under detention when the appeals came for final hearing, therefore the points of law raised by them against the earlier order of detention applied equally to the fresh order of detention. It was said that the detenus intend after the emergency to sue for damages for false imprisonment and the order of the Bombay High Court would stand in their way in case such a suit is brought and therefore an authoritative pronouncement on the questions of law raised should be made by the Supreme Court in the appeals even though technically the order out of which the appeals had arisen had been revoked. The Supreme Court came to the conclusion that the circumstances of the case before it were different from the circumstances in *Keshav Talpade's case* (Supra) and therefore it would be in the interests of justice to decide the points raised in the appeals. It was held that there is nothing to preclude the Supreme Court from deciding the appeals even though the order from which the appeals had arisen had been revoked though ordinarily the Supreme Court would not do so. But in view of the fact that the detenus had not been finally released and were still under detention under a fresh order of detention under the rules and that the points raised in the appeals were of general importance and were to arise in many cases, the Supreme Court overruled the preliminary objection and heard the case on merits : *Godavari v. State of Maharashtra*, A. I. R. 1964 S. C. 1128.

APPEALS BY SPECIAL LEAVE

(Article 136)

1175. General

Under Article 136 of the Constitution of India, the Supreme Court

the purpose of article 136. A tribunal, adjudication where of is subject to appeal, must besides bring under a duty to act judicially, be a body invested with the judicial power of the State: *Jaswant Sugar Mills v. Lakshmi Chand A.I.R. 1963 S. C. 677.*

1182. No failure of justice, Article 136 cannot be invoked

Should the Court interfere under Article 136 of the Constitution, when it is satisfied that there was no failure of justice? The Supreme Court refused to interfere and did not go into the question of jurisdiction on the ground that the Court could refuse interference unless it was satisfied that the justice of the case required it: *A. M. Allison v. B. L. Sen* (1957) S.C.R. 359: Similarly if the Court is not satisfied that the justice of the case requires interference in the circumstances, it should refuse to interfere with the order of the High Court dismissing the writ petition: *Balwant Rai v. M. N. Nagrashna*, A. I. R. 1960 S.C. 407

1183. Certificate by High Court cancelled special leave granted

Where the Supreme Court held that the certificate of fitness granted by the High Court, does not satisfy the requirements of Art. 134(1) (c) of the Constitution, the appeal on such a certificate was dismissed in limine; but the Court in order to satisfy it whether there are such grounds as would justify the Court in granting special leave to appeal to the Supreme Court, if the appellant had approached the Court in that behalf examined the record of the case and granted special leave: *Khushal Rao v. State of Bombay*, A. I. R. 1958 S.C. 22.

If the certificate is defective, it is open to the Supreme Court to grant special leave. In a case in which, having regard to the circumstance of the case, special leave would have been granted if the appellant had the occasion to file such an application, the Supreme Court granted special leave assuming that the certificate granted in the case was defective: *Pershad v. U. P. State*, A. I. R. 1957 S.C.

1184. Decisions of Privy Council may be useful while exercising power under Article 136

Though the Supreme Court is not bound to follow the decision of Privy Council too rigidly because constitutional and administrative reasons which sometimes weighed with the Privy Council need not weigh with the Supreme Court yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of the Supreme Court in granting special leave. Generally speaking the Supreme Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of decision appealed against; *Pritam Singh v. The State*, A. I. R. 1950 S. C. 169.

1185. Special leave when to be granted if the procedure laid down in a statute is sought to be by passed

In *Chokhani's case* (1961) 43 I. T. R. 493 the attempt was to by-pass the decision of the High Court on a question referred to the High Court for decision. It was held that the Supreme Court would not allow the High Court to be by passed, and that an appeal from the decision of the Tribunal in the circumstances was incompetent. A similar view was again expressed in two other cases viz, *Indian Aluminium Co. Ltd. v. Commr. of Income Tax*, 1962 S. C. R. 1619 and *Kanhaiyalal Lokia v. Commissioner Income Tax* A. I. R. 1962 S. C. 1328. In all the

elucidation and final decision by this Court or disclosing such other exceptional or special circumstances which merit the consideration of this Court."

This passage however does not justify a conclusion that by convention and practice the Supreme Court has adopted a more liberal attitude in the case of appeals against awards than in other appeals.

Normally, in dealing with the appeals brought to the Supreme Court under Article 136 of the Constitution against awards which deal with wage structures, the Supreme Court does not interfere with the actual provisions of the wage structure unless some general principles are involved.

It may be that in the facts of some of the appeals a liberal attitude may be discovered but the Court reaffirmed the above mentioned view in the case of *Hindustan Antibiotics v. Workmen* A.I.R. 1967 S.C. 953.

1178. Scope of article 136 in proceedings arising out of application under Article 227.

The High Court was moved for the exercise of its power of superintendence under Article 227 and it is open to the Supreme Court in appeal to exercise the same power : *Thevar v. State of Madras* A.I.R. 1957 S.C. 612.

1179. Scope of Article 136 does not depend on order granting leave

The limits to the exercise of the power under Article 136 cannot be made to depend upon the appellant obtaining the special leave of the Supreme Court for two reasons viz (i) at the stage when leave is granted the Court may not be in full possession of all material circumstances to make up its mind and (ii) the order is only an *ex-parte* one made in the absence of the respondent. The principle to be applied in exercising the power of interference with the award of tribunals does not depend on the fact whether the question arises at the time the appeal is disposed of. It would be illogical to apply two standards to different stages of the same case. This view was expressed by the Supreme Court in *Pritam Singh v. The State of Madras*, 1950 S. C. R. 453, *Hem Raj v. State of Ajmer*, 1954 S. C. R. 1133 : *Sadhu Singh v. State of Pepsu*, A. I. R. 1954 S. C. 271 and was again reaffirmed in *M/s. B. C. & P. Works Ltd. v. Their Employees*, A. I. R. 1959 S. C. 633.

1180. Scope of Article 136 in appeals arising out of article 226.

The appellant filed a petition under Article 226 of the Constitution in the High Court for quashing the order of the Financial Commissioner, but the said petition was dismissed in limine. The scope of the appeal should necessarily be confined to the ambit of the writ petition in the High Court and it is therefore, necessary for the appellant before getting leave to establish that the order of the Financial Commissioner was without jurisdiction or was vitiated by an error of law apparent on the record: *Gurbax Singh v. State of Punjab*, A. I. R. 1967 S.C. 503.

1181. Every decision of an authority required to act judicially is not subject to appeal under article 136.

Every decision or order by an authority under a duty to act judicially is not subject to appeal to the Supreme Court. Under Article 136 an appeal lies to the Supreme Court from adjudication of Courts and tribunals only. Adjudication of a Court or tribunal must doubtless be judicial; but every authority which by its constitution or authority specially conferred upon it is required to act judicially is not necessarily a tribunal for

the leave to appeal granted even at the time of hearing of the appeal In *Haanarain v. Badri*, A. I. R. 1963 S. C. 1553 Gajendragadkar J. speaking for the Court observed :

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave care must be taken not to make any statements which are inaccurate, untrue or misleading."

In this case the Court revoked the leave granted because the appellant had made certain inaccurate and misleading statements in his petition for leave to appeal to the Court. Those statements were in the view of the Court misrepresentations of fact and the Court being satisfied that the appellant had deliberately made those misleading and untrue statements revoked the leave. In another case which was brought to the Court with special leave *S. R. Shetty v. Phirozshah Nusservanji*, C. A. No. 155 of 1963 dated 5th April, 1963(SC) where an attempt was made by the appellant in the petition for special leave to value the property in dispute at more than Rs. 20,000/- when in fact he had valued the same property in another litigation at Rs. 500/-. The Court in revoking the leave observed :—

"The appellant deliberately chose to inflate the valuation of the property so as to obtain the special leave. We have no doubt that if this Court had been apprised of the true valuation which according to the appellant himself was only Rs. 500/- this Court would not have granted the special leave. We cannot therefore, condone this deliberate attempt to mislead the Court in respect of a very material question namely the value of the property in dispute"

These decisions were referred to in a latter case reported as *Rajabhai v. Vasudev*, A. I. R. 1964 S. C. 315.

The court is not bound to grant special leave merely because it is asked for. A party who approaches the Court knowing or having reason to believe that if the true facts were brought to its notice the Court would not grant special leave withholds that information and persuades the Court to grant leave to appeal is guilty of conduct forfeiting all claims to the exercise of discretion in his favour. It is the duty of the party approaching the Court to state facts which may reasonably have a bearing on the exercise of the discretionary powers of the Court. Any attempt to withhold material information would result in revocation of the order, obtained from the Court.

It is wrong to say that the duty of an applicant for special leave to the Court is discharged when he merely summarises the judgment of the Courts below and claims relief on the footing that the findings are correct, when to his knowledge the findings cannot be sustained and the findings have been so recorded because the Courts below have been misled on account of representations for the making of which he was either directly or indirectly responsible : *Ajibhai v. Vasudev*, A.I.R. 1964 S.C. 345.

1187. Reason for dismissal of application special leave need not be given.

It is not the practice of the Supreme Court to give reasons for the dismissal of an application for special leave: *M/S Associated Tubewells v. Gujarmal*, A.I.R. 1957 S. C. 742.

three cases reliance was placed by the appellants to get special leave upon the decisions of the Supreme Court in *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax* (1955) 1 S. C. R. 941 and *Baldev Singh's case* (1960) 40 I. T. R. 605. It was pointed out by the Court that the two cases relied upon were decided on the special circumstances existing there. In the first there was a question of breach of the principles of natural justice which could not be raised otherwise than by an appeal with the special leave of the Court. In the second case, it was pointed out that limitation was lost by the party though no fault of his in as much as a letter was unduly delayed in post. In the case of *Commissioner v. National Finance Ltd.*, A. I. R. 1963 S. C. 835 it was held that the special circumstances which justified the grant of special leave in *Baldev Singh's case* (1960) 40 I. T. R. 605 existed. In that case there was a combination of circumstances which held the filing of the application a day late but in circumstances showing that the default was not due to any negligence on the part of the Commissioner of Income Tax. The receipt of the notice on July, 14 was admitted, but the affixing of the date stamp on the 16th was due to the failure of the clerk to deal with the notice on the 15th because he fell ill and had to leave the office. The Court came to the conclusion that it is difficult to say that the Commissioner of Income Tax was negligent and the negligence, if any on the part of the clerk in putting a wrong date stamp is excusable if one considers his illness and his absence from the office on the 15th. It was held that the case comes within the rule of *Baldev Singh's case* (1960) 46 I. T. R. 605 and an appeal direct to the Supreme Court from the Tribunal's order was held to be justified by the special circumstances because no decision of the High Court was held to be by-passed and because the decision of the High Court related to the correctness of the decision of the tribunal on the question of limitation which was not a question which was sought to be raised in an indirect way by the present appeal: *Commissioner of Income Tax v. National Finance Limited*, A. I. R. 1963 S. C. 835.

An appeal direct from the order of the Tribunal must be dismissed because Supreme Court does not except in exceptional and special circumstances, exercises its power under Article 136 of the Constitution in such a way as to by-pass the High Court by entertaining an appeal direct from the order of the Tribunal and thereby ignore the decision given by the High Court: *I. T. Commissioner Ahmedabad v. Lakhiram Ramdas*, A. I. R. 1967 S. C. 338.

1186. Attempt to mislead the Court—Leave may not be granted and if granted may be revoked

The exercise of the jurisdiction of the Court under Article 136 of the Constitution is discretionary. It is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears that interference by the Court is necessary to remedy serious injustice. A party who approaches the Court invoking the exercise of the overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to over-reach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking

Court being judicial, i.e. as the Court does not exercise administrative or executive powers the determination or order sought to be appealed from must have the character of a judicial adjudication: *Jaswant Sugar Mills v. Lakshmi Chand*, A. I. R. 1963 S. C. 677.

1191. Administrative and Judicial decision, distinction

The question whether a decision is judicial or is purely administrative, often arises when jurisdiction of the superior Courts to issue writs of certiorari is invoked. Often the line of distinction between decisions: judicial and administrative is thin; but the principles for ascertaining the true character of the decisions are well settled. A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact, it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and is under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him; he may be under a duty to hear the objectors and his decision may seriously affect the rights of citizens but unless, in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine question, questions affecting the rights of citizens, does not make the determination judicial: it is the duty to act judicially which invests it with that character. What distinguishes an act judicial from administrative is therefore the duty imposed upon the authority to act judicially.

To make a decision or an act judicial the following criteria must be satisfied :—

- (i) it is in substance, a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;
- (ii) it declares rights or imposes, upon parties obligations affecting their civil rights; and
- (iii) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter of findings based upon those questions of law and fact: *Jaswant Sugar Mills v. Lakshmi Chand*, A. I. R. 1963 S.C. 677.

1192. Tribunal and Court compared

Tribunals which fall within the purview of Art 136(1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the Courts one common characteristic, both the Courts and the Tribunals are "constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions: *Durga Shankar Mehta v. Raghu Raj Singh*, 1955-1 S. C. R. 276. They are both adjudicating bodies and they deal with

COURT OR TRIBUNAL WITHIN THE TERRITORY OF INDIA

1188. Pondicherry before merger not covered.

In order that the Supreme Court may have jurisdiction to entertain an appeal it is a pre-requisite that the Court or Tribunal from whose judgment or order the appeal is preferred should be one in the territory of India. Pondicherry was not part of the territory of India before its merger, with the consequence that the Chief Commissioner is not "a Court or Tribunal in the territory of India" and the Supreme Court would have no jurisdiction in the absence of any legislation by Parliament under Article 137 (1) to entertain appeal by special leave: *Masthan Sahib v. Chief Commissioner*, A. I. R. 1963 S.C. 533; *Masthan Sahib v. Chief Commissioner*, 1962 2 SCA 401.

Similarly special leave to appeal to Supreme Court cannot be granted from an order which was passed by the appellate authority in Pondicherry under the Motor Vehicles Act, 1939 : *K. S. Ramamurthy v. Chief Commissioner Pondicherry*, A.I.R. 1963 S.C. 1464.

1189. Territory of Nizam before 26-1-1950 not territory of India.

Under Article 136 the Courts which passed judgments or sentences must be Courts within the territory of India. The territory of the Government of the Nizam was never the territory of India before 26th of January, 1950 and, therefore the judgment and sentence passed by the High Court of H. E. H. the Nizam on the 12th, 13th and 14th December, 1949 cannot be considered as judgments and sentence passed by a Court within the territory of India.

The Supreme Court had no jurisdiction to entertain the petitions for special leave to appeal against such judgments of the High Court of Hyderabad under Article 136 of the Constitution. An omission to provide for such a relief in the Constitution cannot be remedied by the Supreme Court and assumption of jurisdiction which is not warranted by the clear words of 136 will be tantamount to making legislation by the Supreme Court which is never its function to do.

The right, if it did not exist before 26th January, 1950, can be legitimately construed as newly conferred by Article 136 and such construction does not give rise to any anomaly. The judgments were pronounced and sentences were passed in all the matters before the Supreme Court by the High Court of Hyderabad, which was in the territory of H. E. H. the Nizam and which territory was not the territory of India before 26th of January, 1950 and as those judgments were passed before the Constitution came into force they do not fall within the class of judgments against which special leave to appeal to the Supreme Court can be asked for under Article 136. *Janardhan Reddy v. The State*, A. I. R. 1951 SC 127.

1190. Determination and Order meaning of

The expression 'determination' in the context in which it occurs in Article 136 signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal. The expression "order" must have also a similar meaning except that it need not operate to end the dispute. Determination or order must be judicial or quasi judicial. Purely administrative or executive direction is not contemplated to be made the subject matter of appeal to the Supreme Court. The essence of the authority of the Supreme

1194. Central Board of Revenue is Tribunal

It is clear that before an appeal can be entertained in the Supreme Court under Article 136, two conditions have to be satisfied, the order impugned must be an order of a judicial or quasi-judicial character and should not be purely an administrative or executive order, and the said order should have been passed either by a Court or a Tribunal in the territory of India. It is difficult to lay down any definite or precise test for determining the character of a body which is called upon to adjudicate upon matters brought before it. Sometimes in deciding such a question, Courts enquire whether the body or authority whose status or character is the subject matter of the enquiry, is clothed with the trappings of a Court. Can it compel witnesses to appear before it and administer oath to them, is it required to follow certain rules of procedure, is it bound to comply with the rules of natural justice, in other words is the approach which it is required to adopt judicial or quasi-judicial approach? If all or some of the important tests in that behalf are satisfied the proceedings can be characterised as judicial proceedings and the test of trappings may be said to be satisfied. But apart from the test of trappings, another test of importance is whether the body or authority had been constituted by the State and the State has conferred on it its inherent judicial power. If it appears that such a body or authority has been constituted by the legislature and on it has been conferred the State's inherent judicial power, that would be a significant, if not a decisive indication that the said body or authority is a Tribunal. On the consideration of the scheme of the Act, the nature of the proceedings brought before the appellate and the revisional authorities, the extent of the claim involved, the nature of the penalties imposed and the kind of enquiry which the Act contemplates, it was held that the Central Board of Revenue constitute a Tribunal within the meaning of Article 136 of the Constitution, because they are invested with the judicial power of the State and are required to act judicially: *Indo China Steam Navigation v. Union of India*, A. I. R. 1961 S. C. 1140.

1195. Central Government exercising power under Companies Act, is a Tribunal.

In *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhuujhunwala*, 1962 S.C.R. 339 the question raised before the Court was whether the Central Government while exercising the powers under section 111 (3) of the Companies Act, 1959 (No. 1 of 1956) is a Tribunal within the meaning of Article 136, or not. In dealing with this question the Court first enquired whether, while exercising its powers under Section 111 there was a lis or dispute between the contesting parties relating to their civil rights, and the Central Government was invested with the power to determine that dispute according to law. This dispute was in regard to the claim made by a transferee of a company's share to have his transfer registered in the Company's register, and the view which the Court took was that when such a dispute goes before the Central Government under Section 111, it has to consider and decide the proposal and the objections in the light of the evidence, and not on grounds of policy or expediency and the Court came to the conclusion that the Central Government is a Tribunal under Article 136 of the Constitution:

1196. Central Government exercising power under Mineral Rules acts as Tribunal.

In *Shivji Nathubhai v. Union of India*, 1960 2 S.C.R. 775 it was held that the Central Government exercising power of review under Rule 54 of

and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the Courts is regularly prescribed and in discharging their functions and exercising their powers, the Courts have to conform to that procedure. The procedure which the tribunals have to follow may not be so strictly prescribed, but the approach adopted by the both the Courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of Courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on consideration of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the Courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the Courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State: *Associated Cement Companies v. P. N. Sharma*, A. J. R. 1965 S. C. 1595.

1193. Central Board of Revenue is not a Court

In *Magbool Hussain v. State of Bombay*, 1953 S. C. R. 730 at page 742 while dealing with the impact of the confiscation of goods under the relevant provisions of Section 167 of the Sea Customs Act on the question of the constitutionality of a subsequent prosecution launched against a person whose goods had been confiscated, the Supreme Court had occasion to consider the effect of the order of confiscation in relation to the provisions of Article 20 of the Constitution, and it was held that the proceeding before the Sea Customs Authorities under the Act was not a prosecution and the order of confiscation was not a punishment inflicted by a Court or Judicial Tribunal within the meaning of Article 20(2) and so, the impugned prosecution was not incompetent or invalid. It would thus be seen that one of the points which the Supreme Court had to consider in that case was whether the Collector who had passed the order of confiscation was a Judicial Tribunal within the meaning of Article 20 and the answer rendered by the Court was in the negative. In giving this answer, the Court had observed that the Customs Officers are not required to act judicially on legal evidence tendered on oath and they are not authorised to administer oath to any witness. The appeals, if any, lie before the Chief Customs Authority, which is the Central Board of Revenue and the power of revision is given to the Central Government which certainly is not a judicial authority. The last observation is purely in the nature of an obiter observation, because the status of the Central Board of Revenue did not fall to be considered in that case, but all the same it is no longer open to doubt that the Customs Officer is not a Court though in adjudicating upon matters under Section 167 of the Sea Customs he has to act in a judicial manner. The Central Board of Revenue is not a Court within the meaning of Article 136: *Indo China Steam Navigation Co. v. Union of India*, A. I. R. 1964 S. C. 1140.

1194. Central Board of Revenue is Tribunal

It is clear that before an appeal can be entertained in the Supreme Court under Article 136, two conditions have to be satisfied, the order impugned must be an order of a judicial or quasi-judicial character and should not be purely an administrative or executive order, and the said order should have been passed either by a Court or a Tribunal in the territory of India. It is difficult to lay down any definite or precise test for determining the character of a body which is called upon to adjudicate upon matters brought before it. Sometimes in deciding such a question, Courts enquire whether the body or authority whose status or character is the subject matter of the enquiry, is clothed with the trappings of a Court. Can it compel witnesses to appear before it and administer oath to them, is it required to follow certain rules of procedure, is it bound to comply with the rules of natural justice, in other words is the approach which it is required to adopt judicial or quasi-judicial approach? If all or some of the important tests in that behalf are satisfied the proceedings can be characterised as judicial proceedings and the test of trappings may be said to be satisfied. But apart from the test of trappings, another test of importance is whether the body or authority had been constituted by the State and the State has conferred on it its inherent judicial power. If it appears that such a body or authority has been constituted by the legislature and on it has been conferred the State's inherent judicial power, that would be a significant, if not a decisive indication that the said body or authority is a Tribunal. On the consideration of the scheme of the Act, the nature of the proceedings brought before the appellate and the revisional authorities, the extent of the claim involved, the nature of the penalties imposed and the kind of enquiry which the Act contemplates, it was held that the Central Board of Revenue constitute a Tribunal within the meaning of Article 136 of the Constitution, because they are invested with the judicial power of the State and are required to act judicially : *Indo China Steam Navigation v. Union of India*, A. I. R. 1964 S. C. 1140.

1195. Central Government exercising power under Companies Act, is a Tribunal.

In *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala*, 1962 S.C.R. 339 the question raised before the Court was whether the Central Government while exercising the powers under section 111 (3) of the Companies Act, 1956 (No. 1 of 1956) is a Tribunal within the meaning of Article 136, or not. In dealing with this question the Court first enquired whether, while exercising its powers under Section 111 there was a lis or dispute between the contesting parties relating to their civil rights, and the Central Government was invested with the power to determine that dispute according to law. This dispute was in regard to the claim made by a transferee of a company's share to have his transfer registered in the Company's register, and the view which the Court took was that when such a dispute goes before the Central Government under Section 111, it has to consider and decide the proposal and the objections in the light of the evidence, and not on grounds of policy or expediency and the Court came to the conclusion that the Central Government is a Tribunal under Article 136 of the Constitution :

1196. Central Government exercising power under Mineral Rules acts as Tribunal.

In *Shivji Nathubhai v. Union of India*, 1960 2 S.C.R. 775 it was held that the Central Government exercising power of review under Rule 54 of

and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the Courts is regularly prescribed and in discharging their functions and exercising their powers, the Courts have to conform to that procedure. The procedure which the tribunals have to follow may not be so strictly prescribed, but the approach adopted by the both the Courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of Courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on consideration of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the Courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the Courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State: *Associated Cement Companies v. P. N. Sharma*, A. I. R. 1965 S. C. 1593,

1193. Central Board of Revenue is not a Court

In *Maqbool Hussain v. State of Bombay*, 1953 S. C. R. 730 at page 742 while dealing with the impact of the confiscation of goods under the relevant provisions of Section 167 of the Sea Customs Act on the question of the constitutionality of a subsequent prosecution launched against a person whose goods had been confiscated, the Supreme Court had occasion to consider the effect of the order of confiscation in relation to the provisions of Article 20 of the Constitution, and it was held that the proceeding before the Sea Customs Authorities under the Act was not a prosecution and the order of confiscation was not a punishment inflicted by a Court or Judicial Tribunal within the meaning of Article 20(2) and so, the impugned prosecution was not incompetent or invalid. It would thus be seen that one of the points which the Supreme Court had to consider in that case was whether the Collector who had passed the order of confiscation was a Judicial Tribunal within the meaning of Article 20 and the answer rendered by the Court was in the negative. In giving this answer, the Court had observed that the Customs Officers are not required to act judicially on legal evidence tendered on oath and they are not authorised to administer oath to any witness. The appeals, if any, lie before the Chief Customs Authority, which is the Central Board of Revenue and the power of revision is given to the Central Government which certainly is not a judicial authority. The last observation is purely in the nature of an obiter observation, because the status of the Central Board of Revenue did not fall to be considered in that case, but all the same it is no longer open to doubt that the Customs Officer is not a Court though in adjudicating upon matters under Section 167 of the Sea Customs he has to act in a judicial manner. The Central Board of Revenue is not a Court within the meaning of Article 136: *Indo China Steam Navigation Co. v. Union of India*, A. I. R. 1964 S. C. 1140.

1194. Central Board of Revenue is Tribunal

It is clear that before an appeal can be entertained in the Supreme Court under Article 136, two conditions have to be satisfied, the order impugned must be an order of a judicial or quasi-judicial character and should not be purely an administrative or executive order, and the said order should have been passed either by a Court or a Tribunal in the territory of India. It is difficult to lay down any definite or precise test for determining the character of a body which is called upon to adjudicate upon matters brought before it. Sometimes in deciding such a question, Courts enquire whether the body or authority whose status or character is the subject matter of the enquiry, is clothed with the trappings of a Court. Can it compel witnesses to appear before it and administer oath to them, is it required to follow certain rules of procedure, is it bound to comply with the rules of natural justice, in other words is the approach which it is required to adopt judicial or quasi-judicial approach? If all or some of the important tests in that behalf are satisfied the proceedings can be characterised as judicial proceedings and the test of trappings may be said to be satisfied. But apart from the test of trappings, another test of importance is whether the body or authority had been constituted by the State and the State has conferred on it its inherent judicial power. If it appears that such a body or authority has been constituted by the legislature and on it has been conferred the State's inherent judicial power, that would be a significant, if not a decisive indication that the said body or authority is a Tribunal. On the consideration of the scheme of the Act, the nature of the proceedings brought before the appellate and the revisional authorities, the extent of the claim involved, the nature of the penalties imposed and the kind of enquiry which the Act contemplates, it was held that the Central Board of Revenue constitute a Tribunal within the meaning of Article 136 of the Constitution, because they are invested with the judicial power of the State and are required to act judicially : *Indo China Steam Navigation v. Union of India*, A. I. R. 1961 S. C. 1140.

1195. Central Government exercising power under Companies Act, is a Tribunal.

In *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala*, 1962 S.C.R. 339 the question raised before the Court was whether the Central Government while exercising the powers under section 111 (3) of the Companies Act, 1959 (No. 1 of 1956) is a Tribunal within the meaning of Article 136, or not. In dealing with this question the Court first enquired whether, while exercising its powers under Section 111 there was a lis or dispute between the contesting parties relating to their civil rights, and the Central Government was invested with the power to determine that dispute according to law. This dispute was in regard to the claim made by a transferee of a company's share to have his transfer registered in the Company's register, and the view which the Court took was that when such a dispute goes before the Central Government under Section 111, it has to consider and decide the proposal and the objections in the light of the evidence, and not on grounds of policy or expediency and the Court came to the conclusion that the Central Government is a Tribunal under Article 136 of the Constitution :

1196. Central Government exercising power under Mineral Rules acts as Tribunal.

In *Shivji Nathubhai v. Union of India*, 1960 2 S.C.R. 775 it was held that the Central Government exercising power of review under Rule 54 of

the Mineral Concession Rules, 1949 against an administrative order of the State Government granting a mining lease was subject to the appellate jurisdiction of the Supreme Court, because the power to review was judicial and not administrative. Reference may be made to the decisions of the Court in *Jaswant Sugar Mills Ltd. Meerut v. Lakshmi Chand*, A. I. R. 1963 S.C. 677 and *Engineering Mazdoor Sabha v. Hind Cycles Ltd.*, A. I. R. 1963 S. C. 874 where the Supreme Court mentioned the characteristic of Tribunals.

1197. Conciliation officer is not tribunal within the meaning of articles 136.

Where there was no procedure prescribed for the investigation to be made by the conciliation officer and where he is not required to sit in public; no normal pleadings are contemplated to be tendered; he is not empowered to compel attendance of witnesses, nor is he restricted in making an enquiry before him he cannot be said to constitute a tribunal. The Conciliation Officer is again not capable of delivering a determinative judgment or award affecting the rights and obligations of parties. He is not invested with powers similar to those of the Civil Court under the Code of Civil Procedure for enforcing attendance of any person and examining him on oath, compelling production of documents issuing commission for the examination of witnesses and other matters. He is concerned in granting leave to determine whether there is a *prima facie* case for dismissal or discharge of an employee or for altering terms of employment and whether the employer is actuated by unfair motives. His order merely removes a statutory ban in certain eventualities laid upon the common law right of an employer to dismiss; discharge or alter the terms of employment according to contract between the parties. The Conciliation Officer has undoubtedly to act judicially in dealing with an application but he is not invested with the judicial power of the State; he cannot therefore be regarded as a "tribunal" within the meaning of article 136 of the Constitution: *Jaswant Sugar Mills v. Lakshmi Chand*, A.I.R. 1963 S. C. 677.

1198. Duty to act judicially does not clothe the authority with judicial power of State

The duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State. Even administrative or executive authorities are often by virtue of their constitution required to act judicially in dealing with question affecting the rights of citizens. Boards of Revenue, Customs authorities, Motor Vehicles Authorities, Income Tax and Sales Tax Officers are illustrations *prima facie* of such administrative authorities who though under a duty to act judicially, either by the express provisions of the statutes constituting them or by the rules framed there under or by implication either of the statutes or the powers conferred upon them are still not delegates of the judicial power of the State. Their primary function is administrative and not judicial. In deciding whether an authority is required to act judicially when dealing with matters affecting rights of citizens may be regarded as a tribunal, though not a Court, the principal test is to see if such an authority has the trapping of a Court i.e. power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence (though not the strict rules of the Evidence Act) provision for impos-

REVOCATION OF LEAVE

1201. Leave can be revoked.

There can be little doubt that even in cases where special leave has been granted at the ex-parte hearing of the matter on the petition of the appellant for special leave, the respondent can at the final hearing raise a preliminary contention that special leave should not have been granted: *Indo China Navigation Co. v. Jasjit Singh*, A.I.R. 1964 S.C. 1140.

In *Baldota Brothers v. Sibra Mining Works*, A.I.R. 1961 S.C. 100, the Court has pointed out that there is no distinction in the scope of the exercise of the power under article 136 at the stage of application for special leave and at the stage when the appeal is finally disposed of, and it is open to the Court to question the propriety of the leave granted even at the time of the hearing of the appeal. It is open to the Court to consider whether leave was properly granted or not: *Ghandi Prasad v. State of Bihar* A.I.R. 1961 S.C. 1711.

1202. Leave obtained in violation of mandatory provision can be revoked.

In the case of *Union of India v. Kishorilal Gupta and Bros.* (1960) 1 S.C.R. 493 special leave to appeal from a judgment of a single Judge of the High Court had been obtained without first appealing to an appellate Bench of the High Court. Though the leave could have been revoked, if the objections were taken at the earliest opportunity, an application for revocation of the leave made after inordinate delay was dismissed on the ground that the revocation at the late stage would prejudice the appellant, for if the objection had been taken at the earliest point of time, the appellant would have had the opportunity to prefer a Letters Patent Appeal and the appellant could not be made to suffer for the default of the respondents. But where the special leave had been obtained in contravention of any mandatory rule or provisions of law and where it was not shown that the appellant suffered any prejudice for any default of the respondent on account of any delay in raising the objection, the leave may be revoked: *Management of Hindustan v. Commercial Bank Ltd.* A. I. R. 1965 S.C. 1142.

A preliminary objection that leave should not have been granted because the appeal is against the decision of a single Judge, and the appellant did not avail himself of the right to make an appeal under the Letters Patent, was held to be valid but as the leave was granted the Court did not think it proper to revoke the leave by accepting the preliminary objection: *Raruha Singh v. Achal Singh* A.I.R. 1961, S.C. 1099,

The leave of is not to be revoked if the High Court, is not bypassed and if there is no suppression of any fact which would have relevance to the granting or withholding of the leave: *Gursahai v. I. T. Commr.* A.I.R. 1963 S.C. 1062.

In dealing with the prayer, that special leave granted should be revoked, what was actually urged before the Court cannot be decisive of the matter and may not even be very material: *Municipal Council Palvi v. T. J. Josph*, A.I.R. 1963 S.C. 1560.

1203. Leave cannot be revoked if the parties are left remedyless.

It was urged that the leave should not have been granted as the appellant had a right to appeal to the High Court itself and prayer was made for the revocation of the leave. There were some cases of the High Court which created good deal of doubt as to whether an appeal lay or not to that High Court from an order of the nature appealed against and the parties were therefore legitimately in difficulty in deciding whether an appeal lay to the High Court or not. The Supreme Court did not revoke the leave as the leave was granted by the Supreme Court as far back as March, 29, 1954 and the case was heard in 1958. The other party had at no stage earlier than the hearing of the appeal took any objection to the granting of leave. It would be leaving the parties entirely without remedy as an appeal to the High Court would in any event be barred, if the leave is revoked and for this reason the question of revoking the leave was not allowed to be raised : *Union of India v. Kishorilal*, A. I. R. 1959 S. C. 1362.

FINDING OF FACT

1204. Interference when to be made under Article 136 when finding of fact is involved.

The power under article 136 are wide and undefinable: *Dhakeswari Cotton Mills Ltd v. Commissioner of Income Tax West Bengal*, 1955 1 S.C.R. 941. The necessary pre-requisites for interference by the Supreme Court to set right decisions arrived at by Tribunal whose conclusions on questions of fact are final can be classified under the following categories namely, (i) where the Tribunal acts in excess of the jurisdiction conferred upon it under the statute or regulation creating it or where it ostensibly fails to exercise a patent jurisdiction; (ii) where there is an apparent error on the face of the decision and (iii) where the Tribunal has erroneously applied well-accepted principles of jurisprudence. It is only when errors of this nature exist, that interference is called for. Where there was no deviation from these principles the Court would not interfere. If the Tribunal below had failed to resort to a basic principle, then some thing can be said but when in computing the dearness allowance it has considered various methods and adopted one of them it is difficult to say that there is any question of principle at all : *Clerks Etc. of C. T. Co. v. C. T. Co.*, A.I.R. 1957, S.C. 81.

1205. Finding of if can be challenged.

It is well settled that in an appeal filed by Special leave under Art 136 of the Constitution it is normally not open to the appellant to raise questions of fact or to ask for interference with concurrent findings of fact, unless the findings are vitiated by errors of law or the conclusions reached by the courts below are so patently opposed to well-established principles as to cause miscarriage of justice : *Ratan Gond v. State of Bihar*, A. I. R. 1959 S. C. 21

In an appeal by special leave it is not ordinarily permissible to make submissions on questions of fact: *Bhajahari v. State of West Bengal* A. I. R. 19 9, S. C. 8.

In *Parkash and Co. v. The Commissioner of Income Tax, Bombay*, 1956 S.C.R. 626 at p. 636, it was observed.

'The Court would be entitled to intervene if it appears that the fact finding authority has acted without any evidence

or upon a view of the facts, which could not reasonably be entertained or the facts found are such that no person acting judicially and properly instructed as to the relevant law would have come to the determination in question."

As it is not the practice of the Supreme to set aside findings of fact concurrently arrived at by the courts below the court will proceed on the basis that the appellant has failed to prove the necessary facts *M. Girmallappa v. R. Yellapragouda*, A. I. R. 1959 S. C. 906.

A concurrent findings of fact against the appellant cannot be assailed under Article 136 : *Manak Lal v. Dr. Prem Chand* A. I. R. 1957 S. C. 433.

Though the court came to the conclusion that the mistake made is unfortunate, but it did not think that it is sufficient to disturb the finding of the Court below or even to re-open the finding at appellate stage : *Kamla Devi v. Bachu Lal Gupta*, A. I. R. 1957 S. C. 438,

The contention that plaintiff had attained majority more than three years prior to the suit was held to be immune from attack: *Padma Vithoda v. Mohd. Multani*, A. I. R. 1963 S. C. 70.

Where a question relates to a question of fact on which there is a concurrent finding by the court below and the parties have not been able to satisfy the Supreme Court that there are any special reasons, such as, a manifest error of law in arriving at the finding, or a disregard of the judicial process or of principles of fair hearing etc. the Supreme Court will not interfere: *G. Talayaa v. Jagapathiraju*, A. I. R. 1967 S. C. 649.

Where the Tribunal had to decide whether on the evidence adduced it could be said that the notes were part of the assets received by him from his father the Supreme Court refused to interfere : *Sovachand v. I. T. Commr*, A.I.R. 1959 S.C. 61.

Where the question was whether there was a full and real closure or not and whether it was genuine or bona fide or mala fide, it was held to be one of fact. Similarly where the question was whether there was effective retrenchment or not or whether there was only lockout of the workmen the Supreme Court did not interfere : *Kays Constructions Co. v. Workmen*, A.I.R. 1959 S. C. 210.

The Supreme Court will not go behind the findings¹ of fact of the Courts below if no valid ground for departing from the practice of the Courts is made out: *Mulk Raj v. State of U. P.*, A.I.R. 1959 S.C. 902.

Believing or disbelieving witnesses is essentially a matter for the Courts of fact and in appeal by special leave the Supreme Court will not ordinarily interfere with their discretion. The Court did not interfere in the case : *Brij Bhushan v. The State of Uttar Pradesh*, A. I. R. 1957 S. C. 477.

Whether the opinion which the Central Government entertained was correct on the evidence would not fall for consideration by the Supreme Court in an appeal under Article 136 but as regards the contention that the order is illegal or invalid as a distinct for its being incorrect can be considered : *Mithoo Shahani v. Union of India*, A. I. R. 1964 S. C. 1536.

The question whether a presumption of law or fact stands rebutted by the evidence or other material on record is one of fact and not of law and the Supreme Court is slow to interfere with the view of facts taken by the High Court. No doubt it will be open to the Supreme Court to examine the evidence for itself where the High Court has proceeded upon an erroneous view as to the nature of the presumption or again where the assessment of facts made by the High Court is manifestly erroneous but when the case does not suffer from either of these defects the Court will not re-assess evidence: *Gajendra Narain Singh v Johrimal Prashlad*, A.I.R. 1964 S. C. 577.

When the High Court has preferred the view taken by the Trial Court and has refused to accept the view taken by the First Appellate Court in an appeal with special leave under Article 136 of the Constitution the Supreme Court will not ordinarily discard the findings of the High Court on what is essentially a question of fact and on which question the Court was competent under the law governing the appeal before it to arrive: *Kasibai v Mahadu*, A.I.R. 1965 C: S. 703.

Unless there are exceptional circumstances, the Court will not interfere with a finding of fact: *Indian Iron & Steel Co. v Their workmen*, A.I.R. 1938 S. C. 130.

Where the profits made by the appellant in her shop were determined in the previous years on the basis of credit and debit entries according to the mercantile system the Court did not go into the matter as being one of fact: *Smt. Indermani v. I. T. Commr.*, A.I.R. 1959 S.C. 89.

The Supreme Court is not to sit as a Court of Appeal on facts. In this case, the record was examined with a view to see whether there is any misdirection or non-direction, such as is likely to have affected the result. The Court came to the conclusion that there was none, and refused to interfere in the finding of fact: *J. Cotton Mills v. Commr. I. T. & E.P. Tax*, AIR 1959 S. C. 275.

The question whether there was go-slow during the period in dispute is a question of fact and where the Tribunal has come to the conclusion that there was go-slow during the period, the Supreme Court will not go into finding of fact recorded by a tribunal unless there are special reasons, as for example, where the finding is based on no evidence or the finding of the tribunal is perverse and that evidence which was relevant and material has been ignored: *Workmen v. Motipur Sugar Factory*, A.I.R. 1965 S. C. 1903.

The question which arose between the parties was as to whether the appellant belonged to a particular caste or not. This question was held to be one of fact and as on this question both the Tribunal and the High Court had given a concurrent finding against the appellant, the Supreme Court did not go into it. It is true that in reaching their conclusion on the point the Tribunal as well as the High Court had to consider oral as well as documentary evidence, but in cases of this kind where the Tribunal and High Court make concurrent findings on question of fact, the Supreme Court does not usually interfere and refused to depart from the usual practice in the matter: *Bhaiyal Lal v. Harkishan Singh*, A. I. R 1965 S. C. 1557.

In the appeal with special leave the Supreme Court normally does not seek to re-appreciate the evidence and concurrent findings of the

Courts below are not allowed to be re-opened unless there are special circumstances justifying a departure from that course: *Surasaibalihi v. Phanindra Mohan*, A.I.R. 1965 S. C. 1364.

Generally the Supreme Court is exercise of its jurisdiction under Article 136 of the Constitution accepts the findings of fact arrived at by the High Court. But after having gone through the judgments of the learned Additional Sessions Judge and High Court departed from the said practice: *Dahyabahi v. State of Gujrat* A.I.R 1964, S. C. 1563.

Where the Court comes to a conclusions that special circumstances exist in a case as where the Labour appellate Tribunal did not direct its mind to the real question to be decided and passed an order on the basis of a somewhat irrelevant finding which resulted in manifest injustice the Court interfered in the matter: *Rohlas Industries Ltd. v. Brijnandan*, A.I.R. 1957 S. C. 6.

The point was not raised in the Court below but the Court having heard arguments on it pronounced upon it *Indramani v. W.R. Naidu* A.I.R. 1963 S. C. 274.

The Supreme Court does not under Article 136 of the Constitution entertain a plea that the findings of fact recorded by the Industrial Tribunal are erroneous on the ground that they are based on a appreciation of evidence. The propriety or the correctness of the findings of fact is not ordinarily allowed to be challenged in appeals: *Jan Mohd v. State of Gujarat* A.I.R. 1966 S. C. 395.

A concurrent finding of the trial Court regarding of the negligence of the railway administratson, cannot be challenged in appeal: *Union of India v. W.P. Factories* A.I.R. 1966 S. C. 398.

The question as to whether a person is a workman as defined by S. 2 (s) of the Industrial Disputes Act is question of fact and the finding recorded by the tribunal on the said question, after considering the relevant evidence adduced by the parties, cannot be successfully challenged in the Supreme Court. *New India Motors (P) Ltd. v. K. T. Morris* A.I.R. 1960 S. C. 877.

The question whether a particular workman is a protected workman or not is a question of fact, and the finding of the Labour Court on such a question will generally be accepted by the Supreme Court as conclusive, *P. H. Kalyani v. M/s Air France, Calcutta*, A.I.R. 1963, S. C. 1759,

Where the claim of a party is rejected by the appellate tribunal on the ground that sufficient material has not been placed before it by the party on which the claim could be examined and granted the Supreme Court will not interfere in the matter: *Bihar State Co-Op. Bank v. I. T. Commr.* A.I.R 1960 S. C. 789.

Where it was pointed out that the testimony of witnesses conflicted on vital points the Supreme Court observed that in such cases, it is not the practice of the Court to enter into evidence with a view to finding facts for itself. *Meenglas Tea State v. The workmen*, A.I.R. 1963 S. C. 1721.

In considering an appeal which comes before the Court by special leave the Court normally accept as final every finding of fact reached by the

High Court and the same cannot be canvassed before the Supreme Court: *Board of High School v. Ghanshyam*, A.I.R. 1962 S. C. 1110.

The question whether at a partition between members of a joint Hindu family certain property was left undivided is a question of fact depending upon appreciation of evidence and the Supreme Court according to settled practice regards that conclusion as binding: *Devidas v. Shri Shallappa*, A.I.R. 1961 S. C. 1280.

1206. Exceptional circumstances.

The argument that the practice of the Court in appeals by special leave is not a cast iron one and that it would, therefore be open the Court to depart from in an appropriate was based on the authority of the decision in *Biohahoti Devi v. Kumar Ramendra Naryana*, 73 Ind App 246.

This decision was referred to by the Court in *Srinidhas Ram Kumar v. Mahabir Prasad*, 1951 S C R 277 at p. 281 and it was pointed out that when the Courts below have given concurrent findings on pure question of fact, the Court would not ordinarily interfere with them and review the evidence for the third time unless there are exceptional circumstances justifying a departure from the normal practice. However, it cannot be said that the case is unusual because the reasons given by the High Court for holding that the transaction was a sale are quite different from those given by the trial Court and in fact one of the reasons given by the High Court proceeds on a view of an important piece of evidence which is diametrically opposite to that expressed by the trial Court.

Where the High Court has given certain reasons for accepting the entries and even though the Supreme Court may not agree with them it cannot be said that there is any unusual circumstance which would warrant the reviewing afresh of the evidence on the point as to whether the transaction in question was a sale or not: *Venhata Mallaya v. T. Ramaswami & Co.* A.I.R. 1964 S. C. 822.

1207. Inadequacy of evidence to reach a finding is not a question of law.

The adequacy or inadequacy of evidence to sustain a conclusion of fact is not a matter of law which can be effectively raised in a second appeal. The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which Courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the Courts of fact to contend before High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the Court of facts and cannot be agitated in a second appeal: *Gorind Lal v. State of Raj.* A.I.R. 1963 S. C. 1638.

1208. Interference in second appeals when to be made,

Whenever the Supreme Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately contravened the limits prescribed by Section 100, Civil Procedure Code, the Supreme Court will interfere: *Gorind v. State* A.I.R. 1963 S. C. 168.

1209. Finding of fact recorded under section 66 of the Income Tax Act

Where the questions involved is a question of fact, the decision of the Tribunal thereon would not be liable to be challenged under Article 136 if there is no evidence whatsoever to support the findings or if it is perverse.

The position as considered by the Court in *Meenakshi Mills, Madurai, v. Commission of Income-Tax, Madras*, 1956 S.C.R. 691 is thus stated

- (i) when the point for determination is a pure question of law such as construction of status or document of title, the decision of the Tribunal is open to reference to the court under section 66 (1)
- (ii) when the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final its decision as to the legal effect of that finding is a question of law which can be reviewed by the court.
- (iii) A finding on a question of fact is open to attack under section 66 (1) as erroneous in law when there is no evidence to support it or if it is perverse.
- (iv) when the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact".

See also *J. Cotton Mills v. Commr, I. T. & E. P. Tax*, A.I.R. 1959, S.C. 272, where the above observations were approved by the court.

1210. Finding as to material effect on election cannot be challenged

The Supreme Court refused to go into the evidence for the simple reason that the court in an appeal by special leave does not ordinarily reason findings of fact recorded by a competent tribunal.

Where the Election Tribunal came to the conclusion that the result of the election had been materially affected by the improper rejection of the nomination in question the Supreme Court refused to interfere: *Surendra Nath v. Dalip Singh* A.I.R. 1957 S.C. 245.

1211. Mixed question of law and fact

If the inference drawn by the Tribunal in regard to the status of the workmen involved the application of certain legal tests it will become a mixed question of fact and law and the parties will be allowed to urge arguments against the correctness of the finding of the Tribunal on such a mixed question of fact and law but even in such cases the court would not readily interfere with the conclusion of the Tribunal unless the court is satisfied that the said conclusion is manifestly or obviously erroneous. *Leoyds Bank Delhi v. Panna Lal Gupta*: A.I.R. 1956 S.C. 745.

The question before the Tribunal was the true scope and effect of cl (iii) of S. 25. E. of the Mines Act, 1952 with particular reference to the expression "in the other part of the establishment" occurring therein. As the question was not a pure question of fact as it involved a consideration of the tests which should be applied in determining whether a particular unit is part of a bigger establishment or not, the court went into the matter: *Associated Cement Cos. v. Their workmen*, A.I.R. 1960 S.C. 56.

1212. All evidence not considered finding of fact may be interfered with

This court will not ordinarily interfere with finding of fact given by the trial judge and the appeal court but if in giving the findings the Courts

ignore certain important pieces of evidence and other pieces of evidence which are equally important are shown to have been misread and misconstrued and the Supreme Court comes to the conclusion that on the evidence taken as a whole the tribunal could not properly as a matter of legitimate inference arrive at the conclusion that it has, interference by the Supreme Court will be called for: *State of Madras v. A. Vaidyanatha*, A.I.R. 1958, S.C. 61 at page 64; *Purvesh Ardeshti Poonawala v. State of Bombay* Cri. A. No. 122 of 1954 dated 20-12-1957

The decision given by the Privy Council in the case of *Stephen Sevenira-lne v. The King*, A.I.R. 1936 P.C. 289 at page 299 was approved.

1213. Additional evidence cannot be led

The Supreme Court would not permit the parties to produce additional evidence in the Supreme Court for controverting the findings of fact reached by the appellate Tribunal. When the agreed statements of fact were not challenged before the High Court, the Supreme Court would not go into it; *Income Tax Commissioner Mysore v. Canara Bank*, A.I.R. 1967 S.C. 417 at page 419.

It is the duty of the parties to adduce evidence at the proper stage and if it has not done, it cannot be allowed to be produced in an appeal under Article 136: *Tika Ram and Sons v. Its workman*, A.I.R. 1960 S.C. 193,

1214. Evidence is not to be considered under Article 136

The Supreme Court does not in exercise of its jurisdiction under Article 136 enter upon a reappraisal of the evidence on which the order of the Court or Tribunal is founded. The Legislature has expressly entrusted the power of appraisal of evidence to the lower authorities and the decision of those authorities would ordinarily be regarded as final. But in a proper case the court may in the interest of justice when occasion demands it, review the evidence: *M/S Sooraj Mull v. Income Tax Commissioner*, A.I.R. 1963 S.C. 491.

It is the settled practice of the Court that new pleas which need further evidence are not allowed to be raised in appeals under Article 136 of the Constitution: *Gurcharan Singh v. State of Punjab*, A.I.R. 1963 S.C. 337 at page 340.

1215. Evidence not to be reviewed except in exceptional circumstances

It is well settled practice of the Supreme Court that it will not review evidence except where there has been an illegality or an irregularity of procedure or a violation of the principles of natural justice, resulting in an absence of fair review of evidence with regard to questions of fact, in cases in which the courts of fact have appreciated and assessed the evidence with regard to such question: *Chikkarange Gowda v. Mysore State*, A.I.R. 1956 S. C. 731

Where the court of first appeal did not examine the fact itself but proceeded on an erroneous impression that the trial Court had believed the evidence which affected the examination of the evidence by the High Court itself, the Supreme Court examined the evidence: *Kaushal Kishore v. Ram Dep*, A.I.R. 1959, S.C. 100. The Supreme Court will enquire the matter if the lower Courts act improperly: *State v. Vaidyanatha*, A.I.R. 1958 S.C. 61.

1216. Question likely to arise in other cases allowed to be raised

The points was not raised in the suit or in the grounds of appeal before the High Court and was therefore not considered by it. It was

raised for first time in the statement of case in the Supreme Court. Although the scope of an appeal cannot, even at the instance of the respondent, who is entitled to support a decree in his favour even upon a ground found against him by the High Court, be permitted to be enlarged beyond that of the appeal before the High Court, or the Courts below, yet as the question was of considerable importance and was likely to arise in other similar suits it was allowed to be raised before the Supreme Court.: *B.K. Bhandar v. Dhamanagaon Municipality*, A.I.R. 1966 S.C. 249,

The argument that contractual term of the lease having not expired, the proceeding before the Controller, was, not maintainable, having not been raised in the Court's below, was not allowed to be raised for the first time in Supreme Court : *S. Asia Industries v. Sarup Singh*, A. I. R, 1966 S.C. 532.

The ground that the Tribunal had granted bonus without coming to a conclusion as regards the existence and extent of a gap between the actual wage received by the workmen and the living wage was not taken in the petition for special leave to appeal. Even in the statement of case no such question had been raised. The point was not allowed to be raised at the time of arguments : *Burmah Shell Refineries v. Their Workmen*, A.I.R. 1961 S.C. 919.

Where the parties did not raise the plea of submission either in the pleading or in any of the three Courts below and the question was mixed question of fact and law, the Court did not allow such questions to be raised for the first time. Such questions can be raised if there any exceptional circumstances : *Jaswant Singh*, A.I.R. 1963 S.C. 1523

A question of fact which has to be investigated afresh, cannot be allowed to be raised for the first time : *Rameshwar Bharlia v. State of Assam*, A.I.R. 1952 S.C. 406.

The point that a particular matter having not arisen out of the order of the Appellate Tribunal, the High Court should have refused to answer it was not raised before the High Court or in the statement of the case in the Supreme Court and the point not allowed to be raised in Appeal : *Commer. M. K. Siremann*, A.I.R. 1965 S.C. 1494.

The point whether the premiums received on the issue of shares capital amounted to gains was not urged before the High Court or the Appellate Tribunal and the Supreme Court did not allow it to be developed before it in appeal an under Article 136 : *Bharat Fire and General Insurance Co. Ltd. v. Income Tax Commissioner*, A.I.R. 1964 S.C. 1800.

Where no submissions about the details of the scheme of gratuity were made before the tribunal and also where no points as to the details of the scheme were raised in the special leave petition, the court did not allow the parties to challenge the detail of the scheme at the stage of arguments : *S.V.P. Cement Co. v. Their Workmen*, A.I.R. 1963 S.C. 495

1217. New point if can be disposed of on the basis of evidence on record may be raised.

The new point was allowed to be raised because the question was one of law which could be decided on the material on the records of the

case, in the light of the decision of by court in *New India Sugar Mills v. Sales Commissioner* (1963) Supp 2 S.C.R. 459 which was decided after the judgment of the High Court in the case in hand *State of Rajasthan v. Karam Chand and Brothers* A.I.R. 1965 S.C. 913.

A point of law on admitted facts may be allowed to be raised *Automatic Chemical Works v. Workers* A.I.R. 1961 S.C. 648.

INTERLOCUTORY ORDERS

1218. Interlocutory orders may be challenged.

Article 136 (1) provides that the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India. Sub article (2) excludes from the scope of sub article (1) any judgment, determination, sentence or order passed or made by any Court or tribunal constituted by or under any law relating to the Armed Forces. Thus Article 136 (1) confers very wide powers on the Supreme Court and as such, its provisions have to be liberally construed. The Constitution makers thought it necessary to clothe the Supreme Court with very wide powers to deal with all orders and adjudications made by Courts and Tribunals in the territory of India in order to ensure fair administration of justice. It is significant that whereas articles 133 (1) and 134(1) provide for appeals to the Supreme Court against judgments, decrees or final orders passed by the High Courts no such limitation is prescribed by Article 136(1). All Courts and all Tribunals in the territory of India except those in clause (2) are subject to the appellate jurisdiction of the Supreme Court under Article 136(1) whereas the appellate jurisdiction of the Court under Article 131(1) and 134(1) can be invoked only against final orders no such limitation is imposed by Article 136(1). In other words the appellate jurisdiction of the Supreme Court under the latter provision can be exercised even against an interlocutory order or decision. Causes or matters covered by Article 136(1) are, all causes and matters that are brought for adjudication before Courts or Tribunals. The sweep of this provision is thus very wide. It is true that in exercising its powers under this article the Court in its discretion refuses to entertain applications for special leave, where it appears to the Court that interference with the orders sought to be appealed against may not be necessary in the interest of justice. But the limitations thus introduced in practice are the limitations imposed by the Court itself in its discretion. They are not prescribed by Article 136(1): *Engineering Mazdoor Sabha v. Hind Cycles Ltd.*, A. I. R. 1963 S. C. 374.

Though the powers of the Court under Article 136 are very wide usually the Court does not interfere with interlocutory orders passed by High Court. Where all that the High Court did was to direct that the case should be tried afresh, it was held that as order of remand passed by the High Court did not finally decide the points in the case, the Supreme Court would not interfere with interlocutory orders under Article 136: *Dhanjay v. M. S. Snpadaya*, A.I.R. 1960 S.C. 745.

1219. Case not made out in statement of case

Where an attempt was made to show that a bonus could be granted as an implied term of contract of service, but as such a case was not made

in the statement of the case the Court did not allow that case to be made out at the time of the arguments. The Court has to be strict in enforcing the rules of pleading, as laid down in the rules of the Court bearing on the question of statement of case of the parties. These rules have been laid down with a view to help the Court in narrowing down the controversies between the parties and also for the purpose of giving notice to the other side that a particular question will be raised, and that that party should be ready to meet that particular point. The Court would not ordinarily permit any laxity in the matter of pleadings in the Court: *M/s. Tulsi Das Khimji v. Workmen*, A. I. R. 1963 S.C. 1013

1220. Similar decisions not challenged, becomes final, does not bar the Court to hear other cases.

Where the appeal filed by the State Government may succeed, the result would be that the finality of the orders passed in the other writ petition by the High Court would not be disturbed and that those successful petitioners would be entitled to retain the advantages which they had secured by the decision in their favour not being challenged by an appeal being filed. But this would not limit the jurisdiction of the Court to hear similar appeals filed properly in the Court: *State of Punjab v. Joginder Singh*, A. I. R. 1963 S.C. 917.

1221. State matters

Where all disputes between the parties had been settled and workmen had been reinstated, the Supreme Court did not interfere. The observations of Suba Rao, J. in the *State of Bihar v. Hira Lal Kejriwal*, (1960) I. S.C.R. 726 at p. 736 that "public interest does not require that the state matter should be resuscitated" were relied upon: *State of Bombay v. Vishnu Ramchandra*, A. I. R. 1961 S.C. 307

1222. Order passed within jurisdiction Court should be slow to interfere.

The order under appeal was passed in exercise of the wide powers of revision vested in the Custodian-General under S. 27 of the Administration of Evacuee Property Act. The jurisdiction which was challenged was found in favour of the Custodian-General, the Court observed that in such cases it would normally be slow to interfere with the order on its merits. *Indra Sohan Lal v. Custodian of E. P.*, A.I.R. 1956 S. C. 77

1223. Adjournment not granted, article 136 If Apply

The granting or not granting of adjournment is a matter within the discretion of the Court and such a discretionary order is, ordinarily, not a matter for the consideration of the Supreme Court in an appeal under Article 136 of the Constitution. Where petition for special leave did not mention this point among the grounds of appeal the court held that no special reasons exist for entering the contention. Where the order under appeal gave adequate reasons for rejecting the application for adjournment the Supreme court refused to interfere: *Sukhpal Singh v. Kalyan Singh* A.I.R., 1963 S.C. 146 at page 150.

But to say however, that a Court bearing an appeal shall in no circumstances interfere with an order made by the court below refusing a prayer for adjournment is to be the slave of a formula. Where a Counsel engaged by a

party refuses to address the court on behalf of the client, it is next to impossible for a client to engage an other counsel on the spot to argue the case and ordinarily impossible for the counsel thus engaged to address the court then and there. It is not reasonable to expect that a lay client can argue his appeal and to ask the appellat personally in circumstances to argue the appeal is to ask for the impossible. It is neither fair nor just that when a Counsel suddenly withdraws from a case the lay client should be asked to argue the appeal himself. Justice requires that in such a case the client should be given some time-however short to engage a Counsel : *Sukhpal Singh v. Kalyan Singh* A.I.R. 1963 S.C. 146.

ELECTION MATTERS

1224. Elections matter and article 136.

It is well settled that the jurisdiction of the High Court in dealing with an election appeal under Section 116-A of the Act is very wide. It is open to the High Court to reappraise the evidence and consider the propriety, correctness or legality of the findings recorded by the Tribunal in its order under appeal. Naturally, as a Court of Appeal, the High Court would not interfere with the findings of the fact recorded by the Tribunal which are based merely on appreciation of oral evidence. But that is not to say that the High Court cannot so interfere if it comes to the conclusion that the impugned finding is erroneous and deserves to be reversed. When the matter comes to the Supreme Court under Article 136 against the appellate decision of the High Court, the Court generally does not interfere with question of fact. Ordinarily, the finding of fact recorded by the High Court in dealing with an appeal under S-116 A of the Act are not disturbed, unless there are strong and compelling reasons to do so. The question becomes still more difficult for the appellant where the findings of fact recorded by the High Court happen to confirm similar findings recorded by the Tribunal. That is why the limits of controversy in election appeals brought to the Supreme Court under article 136 become very narrow.

If after carefully considering all such evidence, the High Courts comes to a definite conclusion, ordinarily the Supreme Court would not feel inclined to interfere with such a conclusion after appreciating the relevant evidence itself: *Jagjit Singh v. Kartar Singh*, A.I.R. 1966 S.C. 773.

Where the appeal has been filed with special leave granted under Article 136 of the Constitution, the Court will not go into facts. It is the settled practice of the court to grant leave to appeal under Article 136 only if exceptional and special circumstances exist, or that substantial and grave injustice has been done and the case presents features of sufficient gravity to warrant a review of the decision appealed against. Merely because the appeal has been admitted by special leave, the entire case is not at large, and the appellant is not free to contest the finding of fact of the subordinate tribunals. Only those points on which special leave may initially be granted, can be urged at the final hearing; and normally, special leave will not be granted by the court under Article 136(1) of the Constitution on a plea of error committed by the courts below in the appreciation of evidence. This is true of Election Appeals : *Batwan Singh v. Lakshmi Narain*, A.I.R. 1960 S.C. 775.

- 1225. Misdescription in the heading of special leave, is not fatal
- An application for leave to appeal was filed in the High Court where

in the heading it was described as an application for leave to the Supreme Court from the judgment dated February 16, 1960, in C.M. No. 1212/C of 1959 in R.F.A. No. 44 of 1955. This application was rejected on 17th May 1960. An application for special leave was filed in the Supreme Court where in the heading it was mentioned that special leave is being sought against the judgment of the High Court in R.F.A. No. of 1955 and C. M. No. 1212/C of 1959 dated February 16/26 of 1960. A preliminary objection was taken before the Supreme Court that as no application was made in the High Court against the order dated 26th of February, 1960, that order had become final and special leave could not be asked for under order 13 rule 2 of the Supreme Court rules. This objection was overruled and it was held that special leave could be granted under the circumstances. *Union of India v. Ram Charan*, A.I.R. 1964 S.C. 215.

1226. Order without jurisdiction cannot be sustained.

The argument was that when the Court come to conclusion that the High Court was not competent to issue a writ having regard to the nature of the question raised before it the decision should not be reversed under Article 136 of the Constitution. It may be that in a proper case the Supreme Court may refuse to exercise its jurisdiction under Article 136 where the interests of justice patently indicate the desirability of adopting such a course but such a plea cannot be entertained where it is clearly shown that the impugned orders passed by the High Court are without jurisdiction: *Syed v. Rada Krishnan*, A.I.R. 1964 S. C. 47.

1227. Leave of High court should be obtained before asking special leave-Delay to be explained.

The petition, was presented before the Supreme Court as an application under Article 136 of the Constitution for special leave to appeal from the judgment of the special Bench of the Calcutta High Court without seeking leave of the High Court. The Supreme Court was of the view that an intending appellant who has not applied for or obtained the leave of the High Court and who does not say a word by way of explanation in the petition as to why he did not apply to the High Court and as to why there has been such delay in applying to the Supreme Court should not be encouraged: *Aswini Kumar v. Arabidra Bect*, A.I.R. 1952 S.C 369 at page 386.

1228 Certificate may not be obtained if the practice of the High Court so permits.

Where the Madras High Court at the relevant time consistently took the view that no appeal to Supreme Court lay before the High Court in matters involving revenue the requirement of O. XIII.R. 2 of the Supreme Court Rules and was dispensed with. The decision given in *Commercial Bank v. Bhagwan Dass* A.I.R. 1965 S. C. 1142 was distinguished: *G. K. Kholā v. Dy. Commr of Commercial Taxes*, A.I.R. 1966 S. C. 1216.

1229. Allegations made by affidavits, Court not to Interfere with the findings.

In dealing with the different points the High Court considered the affidavits made by both the parties and commented on the evasive character of the Minister's affidavit more than once in the course of its judgment. In fact, the High Court pointed that it was not satisfied with

the evasive statements made by the Minister in his affidavits; and it appears that the High Court expected further affidavits to be filed on behalf of the Minister, but no such attempt was made and the matter had to be decided on the affidavits as they stood. The Supreme Court refused to reverse the conclusion of the High Court. The question raised for the decision of the High Court lay within a very narrow compass and its decision depended upon the view that the High Court had to form in regard to the reliability or other wise of the affidavits filed by both the parties. Having regard to the volume of affidavit evidence produced on behalf of one party and the unsatisfactory character of the affidavits made by the other party, the High Court was not prepared to accept the Minister's denial: *A. P. S. R. T. v. Satyanaryna* A.I.R. 1965 SC 1303.

1230. Costs.

When the respondent fails in the objections raised to prevent the matter coming to the Court then is no justification for the plea that costs should not follow the event: *Thungabhadra Industries v. Government of Andhra Pradesh*, A.I.R. 1964 S. C. at page 1379.

Costs need not be awarded against tribunals where its judgments are being questioned: *Syed Yakoub v. Radha Kishanah*, A.I.R. 1964 S. C. 477 at page 483.

1231. Question of Jurisdiction when can be raised.

A question of jurisdiction not depending upon facts to be investigated can be allowed to be raised at any stage but where the question raised is whether a Magistrate acting under Section 259 of Cantonment Act 1924, is a *persona designata* and therefore his order is not revisable under Section 435/439 of Code of Criminal Procedure Code, the question will not be allowed to be raised in the Supreme Court. The Supreme Court observed that had the point been raised in the High Court it might have considered the reference as if it was an application before it under Article 227 of the Constitution in which case the High Court would have jurisdiction to interfere with the order of the Magistrate and on this ground the Supreme Court did not allow the parties to raise the question of Jurisdiction: *Cantonment Board v. Piarey Lal*, A. I. R. 1966 S.C. 103, 1966 (3) S.C. R. 567.

1232. Discretion exercised by Courts below not to be Interfered with

The Supreme Court would not normally interfere with the discretion exercised by the High Court in exercising the jurisdiction where there are no exceptional circumstances: *Customs Collector Bombay v. Shanti Lal & Co.* A. I. R. 1966 S. C. 199.

1233. Technical defects—Respondent not properly described does not make an appeal incompetent

It was urged that the appeal filed is incompetent in as much as the respondent is not properly described. Instead of describing the respondent as the workmen of the appellant represented by the Workers' Union, the appellant impleaded the Union itself as the respondent. This objection was held to be purely technical and was rejected. It would have been more accurate to describe the respondent as the appellant's workmen represented by the Union but such a misdescription of the respondent cannot make the appeal incompetent: *M/s. L. B. Ambica Ram v. Income Tax Commissioner*, A. I. R. 1959 S. C. 1294.

1234. Order made on a question of law under article 226 not taken to Supreme Court, case tried on merits, award given, matters settled under article 226 become final

When exercising jurisdiction under article 226 of the Constitution, the High Court does not hear an appeal or revision. The High Court is moved to intervene and to bring before itself the record of a case decided by or pending before a Court or Tribunal or any authority within the High Court's jurisdiction. A petition to the High Court invoking its jurisdiction is a proceeding quite independent of the original controversy. The controversy in the High Court, in proceedings arising under article 226, ordinarily is whether a decision of, or a proceeding before, a Court or Tribunal or authority, should be allowed to stand or should be quashed for want of jurisdiction or on account of errors of law apparent on the face of the record. A decision in the exercise of this jurisdiction, whether interfering with the proceeding impugned or declining to do so, is a final decision in so far as the High Court is concerned because it terminates finally the special proceeding before it.

This view was expressed by the Supreme Court when dealing with the question of applicability of Arts 133 of the Constitution in respect of the order of the High Court in the case of *Ramesh A.I.R. 1966 S.C. 1415*, the Court further pointed out that an appeal or a revision is a continuation of the original suit or proceeding and the finality must, therefore, attach to the whole of the matter and the matter should not be a live one after the decision of the High Court if it is to be regarded as final for the purpose of appeal under Article 133. Notice was taken of the fact that the whole of the controversy had not been decided by the High Court when there is an appeal or revision against an interlocutory order.

Thus when the parties wanted to challenge the correctness of the decision of the High Court holding that the dispute was an industrial dispute, the appropriate remedy was to come up in appeal against the judgment of the High Court either by a certificate under Article 133 or by special leave under Article 136 of the Constitution. The parties having failed to do so, the judgment of the High Court became final, and, consequently, binding between the parties. The parties to that petition were the parties in the appeal brought up against the award of the Tribunal, consequently it is no longer open to the them to raise the plea which was rejected by the High Court: *N. R. Co.-op. Society v. Indus Trib. Raj.*, A. I. R. 1967. S.C. 1186.

1235. Party obtaining decree for divorce from High Court should not remarry till the period for special leave expires

Where a marriage has been dissolved, either party to the marriage can lawfully marry when there is no right of appeal against the decree dissolving the marriage or, if there is such a right of appeal, the time for filing appeal has expired without an appeal having been presented, or if an appeal has been presented it has been dismissed, Section 137 Hindu Marriage Act does not in terms apply to a case of an application for special leave to the Supreme Court. Even so the party who has won in the High Court and got a decree of dissolution of marriage cannot by marrying immediately after the High Court's decree take away from the losing party the chance of presenting an application for special leave. Even though Section 15 of the Act may not apply in terms and it may not have been unlawful for the

parties to have married immediately after the High Court's decree, for no appeal as of right lies from the decree of the High Court to the Supreme Court it was the duty of parties to make sure that no application for special leave had been filed in the Supreme Court. A person cannot by marrying immediately after the High Court's decree deprive the defeated party of the chance to present a special leave petition to the Supreme Court. If a person does so, he takes a risk and cannot ask the Court to revoke the special leave on this ground: *Chandra Mohini v. Arinash Prasad*, A. I. R. 1967 S.C. 583.

ERROR OF LAW

What is error of law.

If a statement is wrong, it would not follow that there is an "error apparent on the face of the record" for there is a distinction which is real though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an 'appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for an apparent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, it is a clear case of error apparent on the face of the record. Where questions of fact are involved and the entire controversy depends on the proper interpretation of statutes and rules made under it and other pieces of legislation which are referred to by the Court it can be said that as the question involved; involves a substantial question, that is "error apparent", of the kind envisaged by O XLVII, R. I. Civil Procedure Code. *Thungabhadra Industries v. Government Andhra Pradesh*, A. I. R. 1964 S. C. 1372.

A conclusion drawn by the Tribunal without advertent to the evidence before it amounts to an error of law and the Supreme Court can interfere with it; *Crompton Parkinson v. Its Workmen*, A. I. R. 1959 S. C. 1089.

Where by an erroneous construction of the relevant provisions the Principle Judge of the City Civil Court granted relief of possession to the respondent to which he would not have been entitled had the provision been rightly construed, even so, as observed by the Court in *Abbashai v. Gulamnabi*, A. I. R. 1964, S. C. 1341 at p. 1436, an erroneous construction placed upon the relevant provision would not furnish a ground for interference under Section 115 of the Code. The High Court cannot in exercise of its powers under section 115, Code of Civil Procedure, set aside the order merely because it was of the opinion that the judgment of the District Court was assailable on the ground of error of fact or even of law.

After referring to the decision of the Privy Council in *Balakrishna Udayar v. Vasudeva Aiyar*, 44 App. 261 the Court observed in *Abbashai* case, A. I. R. 1964 S.C. 1341.

"Therefore, if the Trial Court had jurisdiction to decide a question before it and did decide it, whether it decided it rightly or wrongly, the Court had jurisdiction to decide the case and even if it decided the question wrongly, it did not exercise its jurisdiction illegally or with material irregularity."

The Privy Council had distinguished between cases in which on a wrong decision the court assumes jurisdiction which is vested in it by law and those in which in exercise of its jurisdiction the Court arrives at a conclusion

erroneous in law or in fact, and that while in the former class of cases exercise of revisional jurisdiction by the High Court is permissible it is not permissible in the latter class of cases: *Ratilal v. Ranchhodhai*, A. I. R. 1966 S. C. 441.

An order of an administrative tribunal rejecting a revision application cannot be pronounced to be invalid on the sole ground that it does not give reasons for the rejection; *M. P. Industries Ltd. v. Union of India*, A. I. R. 1966 S. C. 676.

DISCRETION

1236. Exercise of discretion not to be interfered with

Where the question is one of discretion of the High Court and not of its jurisdiction, and if the High Courts in exercise of their discretion thought that the case was one in which its jurisdiction may be permitted to be invoked, the Supreme Court would normally not interfere with the exercise of that discretion: *I. T. Officer Salem v. Short Bros. (P) Ltd.*, A. I. R. 1967 S. C. 31.

Where a case comes before the Supreme Court by special leave the Court does not interfere with the exercise of discretion by the Courts below: *Razia Begum v. Anwar Begum*, A. I. R. 1958 S. C. 886.

If on the considerations of the matter the appellate tribunal preferred to accept a particular view it cannot be challenged in an appeal under Article 136. The Supreme Court will not interfere with the direction of the Labour Appellate Tribunal: *Trichinopoly Mills Ltd. v. Workers Union*, A. I. R. 1960 S. C. 1005.

Where the High Court has chosen to exercise discretion in favour of the respondents it would not be right for the Supreme Court to interfere with the exercise of that discretion unless it is satisfied that the action of the High Court was arbitrary or unreasonable.

Where the appellant has come to the Supreme Court by special leave under Article 136 he is not entitled to challenge the correctness of the decision of the High Court as a matter of right. It is only in the discretion of the Supreme Court that he can be permitted to dispute the correctness or the propriety of the decision of the High Court. When the matter comes to the Supreme Court under Article 136 the Supreme Court can justly interfere with the concurrent exercise of the discretion by the Courts below only if it feels that the said exercise of discretion is patently and manifestly unreasonable, capricious or perverse and that it may defeat the ends of justice. But in the absence of these elements the Court will not interfere: *Printers (Mys) Private Ltd. v. P. Joseph*, A. I. R. 1960 S. C. 1162.

Whether in a given case, the Custodian General may entertain a petition against an order passed by a subordinate authority, notwithstanding gross delay in instituting the proceeding is a matter within his discretion. In exercise of the appellate jurisdiction the Supreme Court under Article 136 of the Constitution, does not interfere with the orders in a matter which is essentially within the competence and relates to the exercise of discretion: *Bishamber Nath v. State of U.P.*, A. I. R. 1966 S. C. 575.

Where the High Court exercised its discretion properly in entertaining the writ application for granting the relief prayed for no case for

interference in an appeal under Article 136 of the Constitution can be made out: *A. V. V. Enkaleswaran v. R. S. Badhwani*, A.I.R. 1961 S.C. 1511.

1237. Industrial Award, when to interfere

The Supreme Court is not expected to go into the matter once again in the appeal. An appeal against an award brought by special leave is not an appeal as of right. It is not intended to be an appeal on every ground of fact and of law, unless the Court considers it fit to examine the matter from any special angle. Before a party can claim redress, it must show that the award is defective by reason of an excess of jurisdiction or of a substantial error in applying the law or some settled principle or of some gross and palpable error occasioning substantial injustice. An industrial adjudication by reason that it is an award cannot be assailed because some other person would have given a different award or that elaborate reason have not been given : *Kamani Metals & Alloys Ltd. v. Workmen*, A. I. R. 1967 S. C. 1179.

The Supreme Court does not sit as a regular Court of appeal over Industrial Tribunals, and does not ordinarily subject the evidence given on behalf of the parties to a fresh review and scrutiny unless it is shown that exceptional or special circumstances exist or that substantial and grave injustice has been done or that the case in question presents features of sufficient gravity to warrant a review of the decision appealed from: *M/s. Indian Iron and Steel Co. v. Their Workmen*, A. I. R. 1958 S. C. 131.

Where no question of principle is involved and where the Tribunal has not committed any error in the matter of awarding compensation the Supreme Court will not interfere: *M/s. Indian Iron & Steel Co. v. Their Workmen*, A. I. R. 1958 S. C. 130.

The Supreme Court can entertain appeals in industrial matters under Article 136 only where general questions of law are raised and where the Court feels called upon to pronounce its decisions on them for the guidance of industrial adjudication in the country. The decisions of Industrial Tribunals on questions of fact and their conclusion is matters within their discretion are not usually revised by the Court under Article 136: *Management of Wenger & Co., v. Workmen* A. I. R. 1964 S. C. 871.

Ordinarily findings of fact recorded by tribunals are not allowed to be challenged in appeals under Article 136: *S. E. & Stamping work Ltd., v. workmen*, A. I. R. 1963 S. C. 1916. (Para 6).

The findings of victimisation is a question of fact and cannot be agitated in Supreme Court. *P. H. Kalyani v. M/s Asia Finance, Calcutta*, A. I. R. 1963 S. C. 1759.

Where the proper principles have been applied by the Tribunal, it is not the practice of the Court to interfere, with details of award when exercising its special jurisdiction under Article 136 of the Constitution: *Hindustan Times Ltd. v. Their workmen*, A. I. R. 1963 S. C. 1338.

The quantum of compensation is a matter primarily for the Tribunal to estimate and it is not open to the Court to go into this question unless it is shown that the Tribunal has committed any error of law or legal principle in deciding it : *C. C. S. Union's case*, A. I. R. 1966. S. C. 990

Where the Tribunal having examined the entire evidence reached a conclusion that the *ex-gratia* payment was in several cases in excess of total loss of remuneration on account of the notification under the Minimum Wages Act and where there was undisputed evidence in the case to show that even in normal times short hours had to be imposed by employers upto a period of three days in a week it was held that it is not possible to say that the Tribunal was in error in holding that the *ex-gratia* payment made by the management was sufficient compensation to the workmen who were not retrenched outright and who were put on short hours of work : *C. C. S. Union's Case*, A. I. R. 1966 S. C. 990.

Where the High Court gave a direction to the Commissioner for assessing compensation on the basis of rates which were approved by the plaintiff's witness, it cannot be said that any serious error was committed in incorporating that direction which would justify interference under Article 136: *M/s. Amar Chand v. Ambica Jute Mills*, A. I. R. 1966 S. C. 1036.

1238. Circumvention of ordinary procedure when allowed.

Article 136 of the Constitution confers a wide discretionary power on the court to entertain appeals in suitable cases not otherwise provided for by the Constitution. It is implicit in the reserve power that it cannot be exhaustively defined, but decided cases do not permit interference unless "by disregard to the forms of legal process or some violation of the principles of natural justice or otherwise substantial and grave injustice has been done. Though Article 136 is couched in widest terms, the practice of the Supreme Court is not to interfere when the parties try to circumvent the ordinary procedure as laid down by law.

In *Dakshwari Cotton Mills case*, 1955—1 S.C.R. 941 : there was a breach of the principles of natural justice, and that was held sufficient to entitle an aggrieved party to come to the Supreme Court against the appellate order of the Tribunal under Art. 136. In *Baldev Singh's case*, A. I. R. 1961 S.C. 736, the Court entertained an appeal against the appellate order of the Tribunal, because limitation to take other remedies was barred without any fault of the assessee concerned. The ratio in each of these cases is that circumstance which cannot be corrected by the procedure, of a stated question of law on a statement of the case may afford a ground for invoking the jurisdiction of the Court under Article 136. That ratio does not apply, where a question of law can be raised, or and is capable of being answered by the High Court or on appeal, by the Supreme Court. An appeal against an order of the High Court deciding a question referred or against a refusal to call for a statement can be brought before the Court under S. 63, if the High Court decides the question referred or if the High Court refuses to call for a statement: *Kanhaiya Lal v. Income-Tax Commr.* A. I. R. 1962, S.C. 1325.

A preliminary point as to the maintainability of the appeal was taken that the appellant having been unsuccessful in availing himself of the other remedy provided in the Act should not be allowed the extraordinary remedy of approaching the Supreme Court with special leave under Income-tax Act, the parties could apply to the Tribunal to refer the High Court any question of law that arose out of the former's decision. The Act itself gave no right of appeal at all from that decision, nor any other remedy against it. The appellant had applied to the Tribunal for an order referring certain questions arising out of its decision to the High Court but was unsuccessful

in getting an order. The Supreme Court was moved for special leave to appeal and the appellant sought for condonation of delay in moving the court, placing before it all the facts. The court on a consideration of the facts condoned the delay and granted special leave. There was no attempt by the appellant to overreach or mislead the Court and the Court in its discretion gave the leave. In these circumstances, the court thought fit to grant leave to the appellant to appeal from the decision of the Tribunal and the preliminary objection was over ruled: *Baldev Singh v. I. T. Commr*, A. I. R. 1961 S C. 738.

Similiary a preliminary objection to the maintainability of the appeal on the ground that the appellant could not file the appeal unless it had exhausted the remedy under Article 226 of the Constitution of India was made. It may be seen that Article 136 confers a discretionary appellate jurisdiction on the court against any order passed by any Tribunal in the territory of India. The said jurisdiction is not subject to any condition that the party who seeks special leave of the court to appeal from such order, to exhaust all his other remedies. The existence of a statutory remedy to such a party may persuade the court not to give leave to appeal to the party but where the Act does not provide for a further remedy against the order made by the Commissioner in revision, it is not necessary to move the court under Article 226. Under Article 228 of the Constitution of India, the High Court's jurisdiction is discretionary and the scope of the jurisdiction is rather limited. The Supreme Court saw no justification to throw out the appeal on the ground that the appellant had not exhausted all his remedies: *Master Construction Co. v. State of Orissa*, A.I.R. 1966 S.C. 1049.

In *Chokhani's case* (1961) 43 ITR 498 the attempt was to by pass the decision of the High Court on a question referred to the High Court for decision. It was held that the Supreme would not allow the High Court to be bypassed and that an appeal from the decision of the Tribunal in the circumstances is incompetent. A similar view was again expressed in two other cases viz. *Indian Aluminium Co Ltd. v. Commr of Income Tax*, A. I. R. 1 62 SC 1619) and *Kanhaiyalal Lohia v. Commissioner Income Tax C. A. A. I. R. 1962 SC 1328*. In all the three cases reliance was placed by the appellants to get special leave upon the decisions of the Court in *Dhakeswari Cotton Mills Ltd. v. Commissioner Income tax* (1954) 1 SCR 941 and *Baldev Singh's case* (1960) 40 I. T. R. 605. It was pointed out by the Supreme Court that the two cases relied upon were decided on the special circumstances existing there. In the first there was a question of breach of the principles of natural justice which could not be raised otherwise than by an appeal with the special leave of the Court. In the second case, it was pointed out that limitation was lost by the party through no fault of his inasmuch as a letter was unduly delayed in post. In the *Commissioner v. National Finance Ltd.* A. I. R. 1963 SC (3) it was held that the special circumstances which existed in (1960) 40 ITR 605 exist. In that case there was a combination of circumstances which held up the filing of the application a day late but in circumstances showing that the default was not due to any negligence on the part of the Commissioner of Income tax. The receipt of the notice on July 15, was admitted, but the affixing of the date stamp on the 16th was due to the failure of the clerk to deal with the notice on the 15th because he fell ill and had to leave the office. The Court came to the conclusion that it is difficult to say that the Commissioner of Income tax was negligent and the

negligence, if any on the part of the clerk in affixing a wrong date stamp is excusable if one considers his illness and his absence from the office on the 15th. It was held that the case comes within the rule of *Baldev Singh's* case (1960) 40 I. T. R. 605 and an appeal direct to the Supreme Court from the Tribunal's order is justified by the special circumstances: *Commissioner of Income tax v. National Finance Limited*, A. I. R. 1963 S. C. 835 at page 837.

In the case of *Mahadaya Premchandra v. Commercial Tax Officer, Calcutta*, 1959 S.C.R. 551 the Court interfered with the order of assessment passed by the Commercial Tax Officer of Calcutta and the Court had been moved by way of special leave to appeal against the original order of the Taxing Officer.

The powers of the Court under Art. 136 of the Constitution are as wide as they could be because unlike the preceding articles, of the Constitution, there is no limitation that the judgment, decree or order should be final in the sense that the party should exhaust all the remedies provided by law before invoking the jurisdiction of the Court to grant "special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India. In spite of the wide amplitude of the jurisdiction of the Court to entertain appeals by special leave, the Court has imposed certain limitations on its own powers for very good reasons and has refused ordinarily to entertain such appeals when the litigant has not availed himself of the ordinary remedies available to him at law: *Ram Saran v. Commercial Tax Officer*, A. I. R. 1962 S. C. 1328.

But where no special circumstances exist, on which the appellant can claim to come to the Court against the decision of the Tribunal, by-passing the decision of the High Court on the question referred, the appeal would be incompetent: *Ram Narian v. Commercial Tax Officer*, A. I. R. 1962 S.C. 1328.

It would be legitimate to infer that the question of jurisdiction had not been urged before the appellate tribunal; if it had been so raised the appellate tribunal would have dealt with it. The point was not allowed to be raised in Supreme Court: *Tika Ram & Sons v. Its Workman*, A. I. R. 1960 S. C. 198.

Where the finding was based on proper evidence the Supreme Court did not go into the matter and observed that the Courts below could on the evidence before them legally come to the conclusion recorded. It is not for the Supreme Court to substitute its own view on the question for the view taken by the Courts below: *M. Girimallappa v. R. Vellappagouda*, A. I. R. 1959 S. C. 906.

Where it was never disputed that the properties were joint family properties and where the Courts below held that the properties provided a sufficient nucleus of joint family property out of which the other properties might have been acquired, the sufficiency of the nucleus being a question of fact it is not to the Supreme Court to interfere with the findings of the Courts below on that question. See *Srinivas Krishnarao Kango v. Narayan Devji Kango* (1955) 1 SCR 1. Unless a presumption is rebutted it must prevail. Where the parties failed to displace that presumption and the presumption remained unrebutted the Supreme Court will not interfere: *M. Girimallappa v. R. Vellappagouda*, A. I. R. 1959 S. C. 906.

The Tribunal having found as a fact that the persons whose thumb impressions the nomination paper purported to bear had really proposed and seconded the candidate and those thumb impressions had been attested by a Magistrate who had in fact been authorised in that behalf the Court did not in go into the question: *Surendra Nath v. S. Dalip Singh*, A. I. R. 1957 S. C. 245.

A point as to the interpretation of a statute was not agitated in the High Court, but as it related only to the interpretation of Section 3 (2) (d) and explanation (1) appended thereto, of the Madras Estates Land Act, the Court allowed the parties to argue the point before it: *G. Talayya v. Jagapathiraj*, A. I. R. 1967 S. C. 849.

Where an attempt was made to argue that there was no scope for applying the principle 'first come first go' because the workmen were working in a department which was distinct and separate it was not allowed to be urged as the Supreme Court held that as it is a question of fact it should have been raised in the original writ proceedings themselves. *Newspapers Ltd. Allahabad, v. U. P. State Industrial Tribunal and others*, A. I. R. 1960, S. C. 1329.

Similarly where the parties did not address the tribunal on the question as to what was the effect of not taking the matter before the conciliation officer the point was not allowed to be taken in the Supreme Court. *B. C. C. & S. Mills v. B. Dasappa*, A. I. R. 1960 S. C. 1352.

A point was not taken even in the petition for special leave before the Court and even though it was a point of some importance the court did not think it proper to allow the appellant to raise it. It was observed that in a matter of this kind it is generally necessary that points should be raised before the original courts because these are matters concerning the interpretation of different sections of the Act and in construing the said provisions prior decisions of the industrial courts on similar question and the practice prevailing in respect thereof would be relevant: *Manager : B. N. C. Mills v. J. Basian*, A. I. R. 1960 S. C. 1112.

Where the contention was that even if the High Court could hold a preliminary enquiry into the conduct of judicial officer, it had no jurisdiction to decide the matter finally, was not raised in the petition or in the High Court and the Court declined to entertain it: *Mohd. Ghouse v. Andhra State*, A. I. R. 1957 S. C. 249.

New point not raised cannot be raised in Supreme Court. The point that a company was a third party in the case and was not entitled to apply for setting aside the order of confiscation or request for the return of the truck, was not raised before the High Court and was not allowed to be raised in the Supreme Court: *Ramparsad v. Vijay Kumar*, A. I. R. 1967 S. C. 276.

1239. Exercise of advisory jurisdiction—Court not to travel beyond it.

Where the jurisdiction of the High Court under Section 24 is advisory the High Court must answer the question referred to it and cannot travel outside the terms of the reference: *State of U. P. Yadendra*

1240. Power under Article 136 can be exercised only when invoked.

Though Supreme Court can exercise an unrestricted power of reviewing the judgment of the High Court in the case of a certificate hedged in with conditions by resorting to its power under Article 136 of the Constitution, the court refused to do so as the parties did not seek to invoke that power: *Raghatamma v. Chenchamma*, A.I.R. 1963 S.C. 136

1241. Decision of appellate tribunal under Income Tax can be challenged under article 136.

The Supreme Court has in the case of *Dhakeswari Cotton Mills Ltd. v. Commission of Income tax, West Bengal*, 1955-15SCR. 941: held that an appeal lies under Art. 136 of the Constitution of India to the Supreme Court against a decision of the Appellate Tribunal under the Indian Income tax Act. But where a party had moved the High Court and decision had been pronounced adverse to him which became final, it would not be open to him to question the correctness of the decision of the Tribunal on grounds which might have been taken in an appeal against the judgment of the High Court: *Dwarkanath v. Bihar State*, A.I.R. 1959, S. C. 249.

REMAND

1242. Real controversy not appreciated case remanded.

Though it would not be proper for the Supreme Court to substitute judgment and discretion for that of the Adjudicator and the Tribunal but when the Court was of the opinion that the real questions that were in dispute between the parties were neither appreciated nor considered the Court had no alternative but to remit the matter to the Labour Appellate Tribunal for a proper decision after drawing up issues that arose out of the pleadings, the issues were framed because the Court was of the opinion that the omission to draw up issues and focus attention on the points that seem to be in dispute has had the result of shutting out evidence that might otherwise have been led: *Tilkeshwar v. Bihar State*, A.I.R. 1953 S.C. 231.

Where the appeal succeeded the Court set aside the order of the Courts below and remanded the case with the direction that the Court will dispose of the suit in the light of the judgment of Supreme Court and the parties would be at liberty to lead evidence as the question of apportionment of rent was not properly decided: *Surendra Nath v. Stephen Court Ltd.* A.I.R. 1966 S. C. 1361 at page 1363.

Case not rewarded

Where the High Court has not considered the evidence, the Supreme Court would remand the case for disposal according to law. But where proceeding has been pending for a very long time, and that in enforcement of the orders of assessment the entire property of the appellant had been attached the Court thought it fit to hear and decide the reference on merits: *Palmiselli v. Commr Income tax* A.I.R. 1963 S. C. 1905.

Where the matter stood concluded by authority, the power of Supreme Court in appeal under Article 136 would not be exercised and the case cannot be remanded: *Shree Meenakshi v. Income Tax Commissioner*, A.I.R. 1957 S. C. 493.

A remand order if the facts show is not called for in the interest of justice will not be issued. Where the proceedings were dragging on and the relationship between the parties was deteriorating, the Supreme Court did not remand the case: *Burn & Co. v. Their Employees*, A.I.R. 1957 S. C. 38.

1243. Allegation of malafide cannot be made for the first time in special leave application.

A plea of mala fides must always be made by proper pleadings at the trial stage, so that the respondent has opportunity to meet the said pleadings. Where attempt was made to refer to certain averments made in the petition for special leave, the Supreme Court did not permit the parties to make out a case of mala fides on the averments made for the first time in the application for special leave and the Supreme Court will not express any opinion on the merits of the plea of mala fides: *Makhhan Singh v. State*, A.I.R. 1964 S. C. 1120.

It is not possible to allow a person to raise a point of mala fides for the first time in Special appeal as this is a question of fact on which no material has been adduced by the respondent either before the enquiry officer or before the tribunal: *Central India Coal Fields v. Ram Bilas*, A.I.R. 1961 S. C. 1191.

1244. Delay in making applications for special leave not to be condoned ex parte

Except in very rare cases, if not invariably; it would be proper that the Court should adopt as a settled rule that the delay in making an application for special leave should not be condoned ex parte but that before granting leave in such cases notice should be served on the respondent and the latter afforded an opportunity to resist the grant of the leave. Such a course besides being just, would be preferable to having to decide applications for revoking leave on the ground that the delay in making the same was improperly condoned years after the grant of the leave. When the Court naturally feels embarrassed by the injustice which would be caused to the appellant if leave were then revoked when he would be deprived of the opportunity of pursuing other remedies if leave had been refused earlier. The suggestion was made that the Rules of the Court should be amended suitably to achieve this purpose: *Gurshai v. I. T. Commr.* A.I.R. 1963 S. C. 1062.

1245. Hypothetical questions not to be decided

It is, not necessary to decide hypothetical questions which may arise in any future reference, that may be made under the amended law. In the exercise of its appellate powers the Supreme Court does not give speculative opinions on hypothetical questions. It would be contrary to justice, inconvenient and inexpedient that opinion should be given on such question. If and when they arise they must arise in correct cases and to use the words of the Earl of Salisbury L. C. in *Attorney General of Ontario v. Hamilton Street*, 1903 A.C. 524.

"It would be extremely unwise for any judicial Tribunal to attempt before hand to exhaust all possible cases and facts which might occur, to qualify, cut down, and over ride the operation of the particular words when the concrete case is not before it". *Central Bank of India v. Their Workmen*, A.I.R. 1960 S. C. 28.

CRIMINAL MATTERS

1046 Scope of Article 136 in criminal matters

The ordinary appellate jurisdiction in criminal cases is laid down in Article 134 of the Constitution. Some of the appeals in that article are available as of right and others only if a certificate is granted by the High Court. The appeals under Article 134 belong to neither class. It is not as of right. There is no sacred right of appeal as the French Canadian Law assumes: See *Mayor etc of Montreal v Brown*, (1876) 2 AC 168 (184)

In Article 136 the use of the words "Supreme Court may in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India." show that in criminal matters no distinction can be made as a matter of construction between a judgment of conviction or of acquittal: *Bhagwan Dass v. The State of Rajasthan*, A.I.R. 1967 S.C. 589; *State of Madras v Vaidyanatha Iyer* A.I.R. 1958 S.C. 61

If there is a gross miscarriage of justice or a departure from legal procedure such as vitiates the whole trial the court will interfere. Where the findings of fact were such as would shock the judicial conscience leave to appeal under Article 136 (1) would usually be granted: *Haripada Das v The State of West Bengal*, A.I.R. 1956 S.C. 757.

The Scope of Article 136 was considered by the court in *Prilam Singh v. The State* A.I.R. 1950 S.C. 169 at page 171 where the law was thus laid down :—

"On a careful examination of Article 136 along with the preceding article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only. The Privy Council have tried to lay down from time to time certain principles for granting special leave in criminal cases which were reviewed by the Federal Court in *Kapildeo Singh v The King*, A.I.R. 1950 F.C. 80.

It is sufficient for our purpose to say that though we are not bound to follow them too rigidly since the reasons, constitutional and administrative, which some times weighed with the Privy Council need not weigh with the Supreme Court yet some of these principles are useful as furnishing in many cases a sound basis for invoking the discretion of the court in granting special leave. Generally speaking the court will not grant special leave unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against".

Article 134 (1) confers a right of appeal to the Supreme Court in certain cases in terms unqualified, on questions both of fact and of law and if the scope of any appeal under Article 136 is to be extended likewise to questions of fact then Article 134 (1) would become superfluous.

The Supreme Court is not to function as a further court of appeal on facts in criminal cases: *Raja Khima v State of Saurashtra*, A.I.R. 1956 S.C. 217 at page 226.

When the Court of first instance and the Court of Appeal arrive at concurrent findings of fact after believing the evidence of a witness, the Supreme Court as the final court does not disturb such findings save in most exceptional cases. But where a finding of fact is arrived at on [the testimony of a witness of doubtful character and the courts below depart from the rule of prudence that such testimony should not be accepted unless it is corroborated.

ted by some other evidence on the record a finding of that character in the circumstances of a particular case may well be reviewed even on special leave if the other circumstances in the case require it and substantial and grave injustice has resulted: *Hanuman v State of M.P.*, A.I.R. 1952 S.C. 343 at page 345

It was urged that the court should not exercise the extraordinary jurisdiction vested in the court by Article 136 in a case of acquittal by the High Court, unless exceptional or special circumstances are shown to exist or substantial and grave injustice has been done. However the Court held that the case is a fit case for the exercise of jurisdiction under Article 136 of the Constitution. *State of Bihar v Basaran Singh*, A.I.R. 1958 S.C. 500; *State v Limsey*, A.I.R. 1954 S.C. 20.

It is wrong to say that under Article 136 interference by the Court with findings of High Court in judgments of acquittal is not permissible. The Supreme Court can interfere where the High Court acts perversely or otherwise improperly or has been deceived by fraud: *State of Madras v Vidyayanatha Iyer*, A.I.R. 1958 S.C. 61; *Limsey case*, A.I.R. 1954 S.C. 20.

Article 136 of the Constitution does not confer a right of appeal on any party from the decision of a Court; but it confers a discretionary power on the Supreme Court to interfere in suitable cases. It is implicit in the discretionary power that it cannot be exhaustively defined. It cannot obviously be so construed so as to confer a right on a party where he has none under the law. The practice of the Privy Council and the Supreme Court is not to interfere on questions of fact except in exceptional cases, when the finding is such that "it shocks the conscience of the Court" or "by disregard to the forms of legal process some violation of the principles of natural justice or otherwise substantial and grave injustice has been done". This self imposed restriction is not lightened but is only heightened where the High Court on the basis of the finding of facts acquitted the accused: *State of Bombay v Ruy Mistry*, A.I.R. 1960 S.C. 391

In the case the Sessions Judge discarded testimony of the witnesses in view of discrepancies on matters of comparatively minor importance and because the witnesses were relative of the deceased and they made statement as to the distance from which the assault was made which could not be true in the light of the medical evidence. The High Court did not accept this view of Trial Court. In an appeal with special leave the Court would not be justified in interfering with the conclusion of the High Court especially when the attention of the Court has not been invited to any substantial infirmity in the reasoning of that Court: *Noor Khan v. State of Rajasthan*, A.I.R. 1964 S. C. 284.

In an appeal under Article 136 it is not open to the accused to challenge the correctness or the propriety of the finding of the High Court that the charge under Section 409 had been proved against him beyond a reasonable doubt. It is a finding on a question of fact. Where in reaching its conclusion on the point the High Court has agreed with the view taken by the learned trial Judge the Supreme Court will be reluctant to interfere. Thus where both the Courts have come to the conclusion that the evidence adduced by the prosecution proved its case against the appellant in respect of the offence under Section 409 and where the relevant evidence on the point has been considered by the High Court, the finding cannot be challenged in appeal: *K. Kunhammad v. The State of Madras*, A. I. R. 1960 S. C. 663.

It is the settled practice of the Court that unless the trial is vitiated by an illegality or irregularity of procedure or the trial is held in a manner violative of the principles of natural justice resulting in an unfair trial, or the trial has resulted in gross miscarriage of justice, the Supreme Court in a Criminal appeal does not nor normally enter upon a review of the evidence on which the conclusion of the courts below is founded: *Shambhu Nath v. State of Bihar*, A.I.R. 1960 S.C. 727.

Where it cannot be said that miscarriage of justice has taken place the court will not interfere: *Khacheru Singh v. State of Uttar Pradesh*, A.I.R. 1956 S.C. 546.

Ordinarily if there are no special circumstances, the Court would not interfere with the conviction: *Santa Singh v. State of Punjab*, A.I.R. 1956 S.C. 526.

Where the High Court was justified in brushing aside the evidence of the prosecution witness who apparently was not truthful witness, besides being very inimically disposed against the accused the court did not go into the matter: *Ram Shankar v. State of U. P.*, A.I.R. 1956 S.C. 425.

Where the Courts below having carefully examined and accepted the evidence directly incriminating the accused the Supreme Court on special leave will not ordinarily go behind their findings: *Chhulanni v. State of U. P.*, A.I.R. 1957 S.C. 407.

Where there was a concurrent finding of fact reached by both the courts below in regard to the identification of the accused the Supreme Court did not examine the matter: *Pritam Singh v. State of Punjab*, A.I.R. 1957 S.C. 415.

The Court allowed the counsel for the accused to make his comments on that part of the evidence of the prosecution witnesses which bears upon the question whether the circumstances alleged against the appellant have been fully established or not and after discussing the evidence it was held that the circumstances have been fully established and there is no doubt about them: *Charan Singh v. State of U. P.*, A.I.R. 1967 S.C. 522.

Though the reasons given by the High Court for believing the evidence were held to be not as satisfactory as they should have been but the fact that witnesses were believed by the trial court as also by the High Court the Supreme Court while exercising jurisdiction in special leave appeal, did not interfere in the matter: *Pritam Singh v. State of Punjab* A.I.R. 1957 S.C. 415.

Where the Courts below have found the facts against the appellant in categorical terms it being questions of fact it is no longer open to challenge before the Supreme Court in an appeal on special leave: *Mobarik Ali Ahmed v. State of Bombay*, A.I.R. 1957 S.C. 357.

In an appeal by special leave the Supreme Court is bound by the findings of fact arrived at by the High Court and especially when such findings are in favour of the accused: *Zabar Singh v. The State of Uttar Pradesh*, A.I.R. 1957 S.C. 468.

Where both the Sessions Judge and the learned Judges of the High Court concurred in the conclusion arrived at regarding respective degrees of guilt of the various accused the Supreme Court hearing an appeal under special leave did not go into the findings on questions of fact arrived at by the lower courts: *Dharman v. State of Punjab*, A.I.R. 1957 S.C. 325.

The practice of the Supreme Court in an appeal under Article 136 of the Constitution is not to allow an attack except in exceptional circumstances on the finding of fact and the Court will be reluctant to interfere if the finding is a concurrent finding: *Major E. G. v. State of Bombay*, A.I.R. 1961 S. C. 1762.

Where there is a concurrent finding of fact that the accused put the signatures of his father on the relevant documents, attested them and got the securities transferred in the name of his father and received the money from the Post Office, the findings being findings of the fact based upon relevant evidence, the court will not interfere with them: *G. S. Bansal v. Delhi Administration*, A.I.R. 1963 S. C. 1579.

Where the various statements made by a witness in cross-examination before and after the framing of the charge clearly demonstrated him to be an utterly untrustworthy witness it would be highly dangerous to act upon his evidence, and where there is no other evidence the Court may interfere: *State of Delhi v. Shri Ram Lohia*, A.I.R. 1960 S. C. 490.

Where the findings are halting and at some places, appear to be inconsistent and as the admitted and proved circumstances are *prima facie* indicative of the guilt of the accused rather than their innocence, the court may go into the question whether the acquittal was proper or not: *State of Bombay v. Rusy Mistry*, A.I.R. 1961 S. C. 391.

Ordinarily, it is not the practice of the Supreme Court to re-examine the finding of fact reached by the High Court, particularly in a case where there is concurrence of opinion between the two Courts below. But where the case against the appellant is based on circumstantial evidence and when there is no direct evidence that he administered poison and the from the evidence of the doctor who performed the post-mortem examination inference of guilt is drawn the Supreme Court felt it necessary in view of the extraordinary nature of the case to satisfy itself whether each conclusion on the separate aspect of the case, is supported by evidence and is just and proper. Ordinarily, the court is not required to enter into an elaborate examination of the evidence but the Court departed from this rule in this particular case, in view of the variety of arguments that were addressed to it: *Anant Lagu v. State of Bombay*, A.I.R. 1960 S. C. 500.

Though in an appeal under special leave the court ordinarily is bound by the finding of fact arrived at by the High Court yet the Supreme Court went into the matter as the High Court did not deal with the appeal as it should have, done: *Jumman v. The State of Punjab*, A.I.R. 1957 S. C. 472.

Where the Court came to the conclusion that all the relevant facts bearing on the question were not considered by the learned Judges of the High Court and the failure to take into account these material facts introduced a serious legal infirmity the conclusion was reversed: *Sarwan Singh v. State of Punjab*, A.I.R. 1957 S. C. 637.

If the all the facts taken together call for interference the Court may interfere: *Ramjanam Singh v. Bihar State*, A.I.R. 1958 S. C. 643.

A point not raised in Courts below cannot be urged in High Court *Dhannajay v. M. S. Upadaya* A.I.R. 1960 S. C. 745

1247. Fresh opinion about the guilt if can be formed.

The Supreme Court does not form a fresh opinion as to the or the guilt of the accused. It accepts the appraisal of the

High Court and the courts below. Therefore, before the court interferes something more must be shown such as that there has been in the trial a violation of the principles of natural justice or a deprivation of the rights of the accused or a misreading of vital evidence or an improper reception or a rejection of evidence which if discarded or received would leave the conviction unsupportable or that the court or courts have committed an error of law or of the forms of legal process or procedure by which justice itself has failed: *Saravanabhavan v. State of Madras*, A. I. R. 1968 S. C. 1973

1248. Evidence not to be scrutinised unless there is failure of justice

The conclusion recorded by the court of first instance and affirmed by the High Courts based upon appreciation of evidence are not to be upset where specially no question of law arises there from. Normally the Court does not proceed to review the evidence in appeals in criminal cases, unless the trial is vitiated by some illegality or irregularity of procedure or the trial is held in a manner violative of the rules of natural justice resulting in an unfair trial or unless the judgment under appeal has resulted in gross miscarriage of justice: *Kirpal Singh v. State of Uttar Pradesh*, A. I. R. 1965 S. C. 712.

It is universally recognised that in regard to a large number of constitutional problems which are brought before Court for its decision complex and difficult questions arise and on many of such questions, two views are possible. Therefore, if one view has been taken by Court after mature deliberation, the fact that another Bench is inclined to take a different view may not justify the Court in reconsidering the earlier decision or in departing from it. The problems of construing constitutional provision cannot be reasonably solved merely by adopting a literal construction of the words used in the relevant provisions. The Constitution is an organic document and it is intended to serve as a guide to the solution of changing problems which the Court may have to face from time to time. Naturally, in a progressive and dynamic society the shape and appearance of these problems are bound to change with the inevitable consequence that the relevant words used in the Constitution may also change their meaning and significance. That is what makes the task of dealing with constitutional problems dynamic rather than static. Even so, the Court should be reluctant to accede to the suggestion that its earlier decision should be lightly bearded, reviewed and departed from. In such a case the test should be is it absolutely necessary and essential that the question already decided should be re-opened? The answer to this question would depend on the nature of the infirmities alleged in the earlier decision, its impact on public good and the validity and compelling character of the considerations urged in support of the contrary view. If the said decision has been followed in a large number of cases that again is a factor which must be taken into account: *Sajjan Singh v. State of Rajasthan*, A.I.R. 1965 S. C. 845.

SENTENCE

1249 Interference in matters of sentence

Ordinarily the Court does not interfere in the matter of sentence in appeals under Article 136, but in the circumstances disclosed in the appeal where the accused had already been in jail for more than ten months along with the fact that the trial had been prolonged for eleven years and when the officers and servants of the Board including the highest officer were

behaving as if the moneys of the Board were their private property and the misappropriation took place mainly because the accused was obliging these officers and servants of the Board the sentence already undergone by the accused was held sufficient : *Munna Lal v State of U. P.*, A. I. R. 1964 S.C. 21

Similarly where facts of the case before the court presented some unusual features there the court technically interfered with the sentence of one year, imprisonment passed by the Chief Presidency Magistrate. The accused was sentenced by the Presidency Magistrate on April, 24, 1963 and thereupon he started serving the sentence till the judgment of the High Court which was rendered on December, 10, 1963. The respondent was released the next day i. e. December, 11, 1963. The Supreme Court granted special leave on December, 20, 1963 and thereafter on application made by the appellant-State the Court directed arrest of the respondent. The respondent was accordingly arrested and though the Magistrate directed his release on bail pending the disposal of the appeal in the Supreme Court, the accused was unable to furnish the bail required and hence suffered imprisonment. The imprisonment continued till May, 8, 1964 when the decision of the Supreme Court was pronounced, so that virtually the accused had suffered the imprisonment that had been inflicted on him by the order of the Presidency Magistrate. In these circumstances, though the appeal was allowed the accused was not sent back to jail: *State of Maharashtra v M.H. George*, A.I.R. 1965 S.C. 722 at page 744.

ABATEMENT

1250 Criminal appeals when abate

The revision petitions and some appeals from sentences of fine might be continued by the legal representatives on the death of the accused pending the proceeding. *Pranab Kumar Mitra v State of West Bengal* (1959) Supp (1) S.C.R. 63 : But the mere possibility that the legal representative might get the pay in case the civil servant is acquitted does not confer any right on the Legal Representative to continue the appeal: *Bangoda v State*, A.I.R. 1965 S.C. 1645.

1250. Appeals against jury verdict, scope of interference is narrow.

Since the appeals before the High Court and before the Supreme Court was against the convictions and sentences based on the acceptance of the verdict of the jury against each of the accused, it was held that scope for interference on appeal either by the High Court or by the Supreme Court is very limited: *Sardul Singh v. State of Bombay* A. I. R. 1957 S. C. 747 at page 759.

1251 Conviction based on circumstantial evidence-Principles governing.

The Supreme Court in *Anant Chindaman Lagu v. State of Bombay*, 1960 2 S. C. R. 460 has laid down the principles which govern the cases where the conviction is based on circumstantial evidence. In that case Hidayatullah J. at p. 516 quoting the observations of Baron Parke in *Towells case* (1854) 2 C. and K. 309 where the learned Baron laid down the principles applicable to such cases observed that any circumstance which destroy the presumption of innocence, if properly established can be taken into account to find out if the circumstances lead to no other inference but of guilt. Thus what is to be seen is whether the totality of circumstances which are held to have been proved against the appellants

it can be said that the case is established against the appellants i. e. the facts established are inconsistent with the innocence of the accused and incapable of explanation on any hypothesis other than that of guilt. Similar observations were made in *Gorinda Reddy v. State of Mysore*, A.I.R. 1960 S. C. 29 and *Raghav v. State* A.I.R. 1963 S. C. 74.

The Court will be slow to entertain question of prejudice when details are not furnished and when the objection is not taken at an early stage: *Sukha v. State of Rajasthan*, A.I.R. 1956 S. C. 513.

Where no grievance was made in so far as the contravention of provision of S. 324 Criminal Procedure Code was concerned either before the Court of the Additional Sessions Judge or before the High Court that by such a contravention the accused was prejudiced, the Court will not allow the point to be raised for the first time in Supreme Court, the reason being that whether there was prejudice is a question of fact and cannot be permitted to be agitated for the first time in an appeal under Article 136 of the Constitution: *Radha Kishan v. State of U. P.*, A.I.R. 1963 S. C. 822.

An argument necessitating retrial ought to be put forward at the earliest stage and at any rate at the time of the regular appeal in the High Court. This cannot be entertained for the first time in an appeal on special leave. *Kartar Singh v. State of Punjab*, A.I.R. 1956 S. C. 536.

Where the point that there had been misjoinder of charges was not urged in the High Court because there was no reference to it in the judgment of that Court and was not taken in the Petition for special leave the Court did not let the parties to raise question in Supreme Court. *Mangal Singh v. M. B. State* A.I.R. 1957 S. C. 201.

It was urged that the entire evidence with regard to the recovery should be discarded, as the police investigation in the case was not a straight forward one but was conducted in such a way as to raise suspicion that the police was deliberately trying to create some evidence of recovery against each of the accused persons the Court refused to do so on the ground that it is not the function of the Court to reassess evidence and an argument on a point of fact which did not prevail with the Courts below cannot avail the appellants in the Court: *Lachman Singh v. The State* A.I.R. 1952 S. C. 169.

PROFESSIONAL MISCONDUCT

1253. Cases of professional misconduct.

The jurisdiction exercised by the High Court in cases of professional misconduct is neither civil nor criminal as these expressions are used in Articles 133 and 134 of the Constitution. In one aspect it is a jurisdiction over an officer of the Court and the Advocate owes a duty to the Court apart from his duty to his clients. In another aspect it is a statutory power and a duty vested in the Court under Section 10 of the Bar Councils Act to ensure that the highest standards of professional conduct are maintained, so that the Bar can render its expert service to the public in general and the litigants in particular and thus discharge its main function of co-operating with the judiciary in the administration of justice according to law. This task which is at once delicate and responsible the statute vested in the High Court and therefore, the primary responsibility of ensuring it rests with it.

The Supreme Court in consequence is most reluctant to interfere with the orders of High Courts in the field, save in exceptional cases when any question of principle is involved or where the Court is persuaded that some violation of the principles of natural justice has taken place or that otherwise there has been a miscarriage of justice. Where however none of these factors are present, it is not the practice of the Court to permit the canvassing of the evidence on the record either for reappraising it or to determine whether it should be accepted or not. The findings of the High Court therefore on questions of fact are not open before the court and it would only consider whether on the facts found the charge of professional misconduct is established or not: *P. J. Ratnam v. D. Kanikaram*, A.I.R. 1964 S. C. 214.

On a matter of punishment the court is reluctant to interfere with order of the High Court. But as respects the disciplinary action to be taken against a member of the Bar who has been guilty of professional misconduct where there are mitigating circumstances, the Court may be interfere: *Lalit Mohan v. Advocate General Orissa*, A.I.R. 1957 S.C. 255.

1254. Cases under Corruption Act.

How the burden which has shifted to the accused under S. 4 (1) of the Prevention of Corruption Act is to be discharged has been considered by the Court in *State of Madras v. A. Vaidyanatha Iyer*, A. I. R. 1958 S.C. 61 where it was observed:—

"Therefore where it is proved that a gratification has been accepted then the presumption shall at once arise under the Section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on the accused. It may here be mentioned that the legislature has chosen to use the words "shall presume" and not "may presume", the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act no doubt for the purposes of that Act, but S. 4 of the Prevention of Corruption Act is in *pari materia* with the Evidence Act because it deals with a branch of law of evidence i.e. presumptions, and, therefore, should have the same meaning, "Shall presume, has been defined in the Evidence Act as follows:—

"Whenever it is directed by the Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved".

It is a presumption of law and therefore, it is obligatory on the Court to raise this presumption in every case brought under S. 4 of the Prevention of Corruption Act because unlike the case of presumption of fact presumption of law constitute a branch of jurisprudence".

These observations were made by the Supreme Court while dealing with an appeal against an order of the Madras High Court setting aside the conviction of an accused person under S. 161 I. P. C. In that case the accused an Income Tax Officer was alleged to have received a sum of Rs. 1000/- as bribe from an assessee whose case was pending before him. His defence was that he had taken that money by way of loan. The High Court found as a fact that the accused indeed had asked the assessee for a loan of that amount. It was of opinion that the versions given by the assessee seemed to tilt the scale in favour of the accused and that the evidence was not sufficient to show that the explanation offered cannot reasonably be rejected. The Supreme Court however reversed the High Court's decision holding that the approach of the High Court was wrong. The basis of the decision of the Court evidently was that a pre-

sumption of law cannot be successfully rebutted by merely raising a probability, however, reasonable that the actual fact is the reverse of the fact which is presumed. Something more than raising a reasonable probability is required for rebutting a presumption of law. The bare word of the accused is not enough and it is necessary for him to show that upon the established evidence his explanation was so probable that a prudent man ought in the circumstances to have accepted it.

1255. Review.

In a review application, it is highly improper on the part of an advocate to refer in detail as to what happened in the Court on the previous occasion and as to what transpired between the various judges : *Associated Tubewells v. Gujarnal A.I.R. 1957 S. C.*

The Supreme Court has inherent power to review its decisions. In exercising this inherent power, the Court would naturally like to impose certain reasonable limitations and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, unless it is satisfied that there are compelling and substantial reasons to do so, it is general judicial experience that in matters of law involving question of constructing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision-making is often very difficult and delicate. When the Court hears appeals against the decision of the High Court and is required to consider the propriety or correctness of the view taken by the High Courts on any point of law, it would be open to the Court to hold that though the view taken by the High Court is reasonably possible is better and should be preferred. In such a case, the choice is between the view taken by the High Court whose judgement is under appeal, and the alternative view which appears to the Court to be more reasonable and in accepting its own view in preference to that of the High Court, the Court would be discharging its duty as a Court of appeal. But different considerations must inevitably arise where a previous decision of the Court has taken a particular view as to the construction of a statutory provision and when it is urged that the view already taken by the Court should be reviewed and revised it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviewing and revising, its earlier decision, the Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When the Court decides questions of law, its decisions are, under Article 141, binding on all Courts within the territory of India, and so it must be the constant endeavour and concern of the court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by the Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion the Court is satisfied that its earlier decision was clearly erroneous it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully

justified. It is not possible or desirable and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations:— what is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of the Court bearing on the point was not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by the Court or by the High Courts? And would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever the Court is called upon to exercise its jurisdiction to review and revise its earlier decision. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of the Court: *The Kashav Mills Co. Ltd. Palad v The Commissioner of Income tax Bombay North, Ahmedabad*, A.I.R. 1965 S.C. 1636.

1256. Advisory jurisdiction

The President can refer any matter to the Supreme Court for seeking its advice. The fact that a Bill is referred to the Court will not make any difference. It is for the President to determine as to what question are to be referred to the Supreme Court under Article 143 and the Court may on good reasons decline to give any opinion. In *re Kerala Education Bill 1957*, 1959 S.C.R. 995. In *re* under Article 143, A.I.R. 1965 S.C. 745.

In *Berubari Union's Case*, A.I.R. 1960 S.C. 845 the Court held that cession of territory must be by legislative Act.

The words of Art. 143 (1) are wide enough to empower the President to forward to the Supreme Court for its advisory opinion any question of law or fact which has arisen or which is likely to arise provided it appears to the President that such a question is of such a nature or of such public importance that it is expedient to obtain the opinion of the Court upon it. However, the Supreme Court is not bound to give such advisory opinion in every case: In *re. Under Article 143, Constitution of India*; A.I.R. 1965 S.C. 745 at page 746.

Under Article 143 (1) it may be competent to the President to formulate for the advisory opinion of the Supreme Court questions of fact and law relating to the validity of the impugned provisions of existing laws, it may be open to him to formulate questions in regard to the validity of provisions proposed to be included in the Bills which would come before the Legislatures, it may also be open to him to formulate for the advisory opinion of the Court questions of constitutional importance. In *re. Under Article 143, Constitution of India*, A.I.R. 1965 S.C. 745 at page 746.

1257. Rule making Power

Rules framed under Art 145 being in the exercise of the delegated power of legislation the said power cannot be exercised so as to affect the fundamental rights. If the wide words used in Article 142 cannot justify an order of security in an Art. 32 petition, it follows that a rule made under Article 145 cannot authorise the making of such an order. It may be that

in some cases, the respondent may not be able to recover its costs from the petitioner even if the petition is dismissed on the merits. But that cannot justify the making of an order for security, because even impecunious citizens, or citizens living abroad, must be entitled to move the Court if they feel that their fundamental rights have been contravened. Similarly, women who own no property would be entitled to move the Court in case their fundamental rights are contravened, and following the analogy of O. 25 R. 1 (3), no order for security can be made against them because that would make their right illusory. Rule framed under Art. 145 which govern the practice and procedure in respect of the petitions under Art. 32 with the object of aiding and facilitating the orderly course of their presentation and further progress until their decision, cannot be said to contravene Article 32.

But if a rule imposes a financial liability on the petitioner for the benefit of the respondent and non-compliance with the said rule brings to an end the career of the said petition, that must be held to constitute an infringement of the fundamental right guaranteed to the citizen to move the Court under Art 32: *Prem Chand Garg and another v. Excise Commissioner* A.I.R., 1963 S. C. 998

The statutory period of limitation prescribed by Limitation Act, 1963, prevails over the rules made by the Supreme Court: *A. D. Partha Sarathy v. State of Andhra Pradesh*, Petition for Special Leave of Appeal C.A. No. 189 of 1965, decided on 7-5-1965.

A rule prescribing an Advocate on Record to take examination if he wants to become an Advocate on Record is valid: In *re-Lily Isabel Thomas*, A.I.R. 1964 S.C. 855. Similarly a rule authorising publication of list of counsels by Registrar is intra vires to the powers of Supreme Court: *Re-Sant Ram*, 1960(3) S.C.R. 499.

A constitution Bench of five or more Judges before which a case happens to be posted in the first instance is competent to split up the case by deciding the constitutional questions and leaving the rest of the case to be dealt with and disposed of by a Division Bench of less than five judges on merits in conformity with the opinion of the Constitution Bench. Article 145 (3) of the Constitution cannot be so construed as to deprive the Supreme Court of the inherent power of splitting up a case for the purpose of bearing and deciding: *Rao Shiva Bahadur Singh v. The State of Vindhya Pradesh*, 1955 (2) S.C.R. 208.

Question whether the jurisdiction of the High Court under Article 226 to quash the orders of Administrative Tribunals is confined only to circumstances in which the High Court of England can issue a writ of certiorari, or is much wider than the said power involves a substantial question of law as to the interpretation of the Constitution. Such a question can be heard only by a Bench of five judges: *K. M. Shanmugam v. S.R.V.S. (P) Ltd and others*, A.I.R. 1963 S.C. 1628.

The Court held that Article 20 (2) has been fully decided by the Supreme Court in *State v. S L. Apte*, A.I.R. 1961 S.C. 578 and what remained in this case is only its application: *Bhagwan Swarup v. State of Maharashtra* A.I.R. 1965 S.C. 682.

1258. Binding nature of decisions.

No doubt the law declared by the Court binds Courts in India but it should be seen that the Supreme Court does not enact : *Rajeswar Prasad v. State of W.*, B. A.I.R. 1965 S. C. 1887.

The Supreme Court should not make any pronouncement which is not strictly necessary for the disposal of a particular case before it : *Rashesbar Nath v. The Commissioner of Income Tax Delhi*, 1951 S.C.R. Supp. (1)528 A.I.R. 1959 S.C. 149, *Nareesh v. State* A.I.R. 1967 S.C. 1.

The decisions of the English Courts being merely of persuasive authority, decisions of such courts even if at variance with one of the Supreme Court do not by themselves justify an application to reconsider an earlier decision of the Supreme Court : *Manipur Administration v. Btra Singh* A.I.R. 1965 S. C. 87.

Supreme Court is not bound by its own decision : *Dwarka Dass Shrinivas of Bombay v. The Sholapur Spinning and Weaving Co. and Ors*, 1954 S.C.R. 674.

The observations in the judgment of the Supreme Court which are in the nature of obiter dicta cannot be relied upon for the purpose of showing that certain statutory Rules should be held to be valid as a result of the said observations : *Moti Ram v. N. E. Frontier Railway*, A.I.R. 1964 S.C. 601.

As the Court has often emphasised, in constitutional matters it is of utmost importance that the Court should not make any obiter observations on points not directly raised before it for its decision : *Rajagopala Naidu v. The State Transport Appellant Tribunal*, A.I.R. 1964 S.C. 1573 at 1581 : *Neresh v. State*, A.I.R. 1967 S. C. 1. There is nothing in the Constitution which prevents the Supreme Court from departing from a previous decision if it is convinced of its error and its baneful effect on the general interests of the public but the Supreme Court should not lightly dissent from a previous pronouncement of the Court. Its power of review, which undoubtedly exists, must be exercised with due care and caution and only for advancing the public well being in the light of the surrounding circumstances of each case brought to its notice but it is not right to confine its power within rigidly fixed limits. If on a re-examination of the question it comes to the conclusion, that the previous majority decision was plainly erroneous then it will be its duty to say so and not to perpetuate its mistake.

The doctrine of stare decisis has hardly any application to an isolated and stray decision of the Court very recently made and not followed by a series of decision based therein : *Bengal Immunity Co. v. State of Bihar* (1955) 2 S. C. R. 603 : A.I.R. 1955 S. C. 661.

The clear enactment of Article 141 of the Constitution leaves no scope in India for the application of the American doctrine that the declaration by a court of unconstitutionality of a statute which is in conflict with the Constitution affects the parties only and there is no judgment against the statute and it does not strike the statute from the statute book.

Question of law regarding passport rules having already been decided by Constitution Bench, a bench consisting of less than five Judges can bear the appeal : *Abdul Rahim v. The State of Bombay*, 1961 (1) S.C.R. 285.

CHAPTER XXVIII

WRITS

SYNOPSIS

- 1259. Scope of Article 226
- 1260. Property whether public or private, question cannot be raised in writ proceedings
- 1261. Alternate Remedy if bars a writ
- 1262. Interlocutory orders
- 1263. Interim order should not be passed on a holiday
- 1264. Res judicata in writ proceedings
- 1265. Constructive Res judicata
- 1266. Decision on merits under Article 32 and 226 operate as Res judicata in Suits
- 1267. Scheme settled by Court for the administration of religious property can be challenged in writ proceedings
- 1268. Decision given under Article 226 based on assumption can be set aside
- 1269. Dispossession ordered by executive fiat.—Writ will lie
- 1270. Final order to be challenged in writ proceeding, writ cannot be issued to original authorities
- 1271. High Court should not encourage circumvention of ordinary procedure in writs
- 1272. Various assessment orders challenged in one writ
—One court fee is enough in appeal to Supreme Court
- 1273. Contempt proceedings in a legislature can be challenged
- 1274. Manifest injustice should be shown
- 1275. Question of Taxability should not be decided under Article 226
- 1276. Order confirming sale is a judicial order
- 1277. Sufficiency of evidence cannot be gone into
- 1278. Writ not to be granted if there is breach of only contractual obligation
- 1279. Consequential relief can be given
- 1280. Delay and Limitation—Period prescribed under Limitation Act can be taken as a guide

WRIT OF CERTIORARI

- 1281. Scope of
- 1282. Manifest error apparent on the face of record

- 1283. Executive instructions—Breach of—Writ of certiorari does not lie
- 1284. Statutory rules and executive directions, distinction
- 1285. Quasi judicial and Administrative bodies
- 1286. Authorities can interfere only under express provision of law
- 1287. Mere erroneous decision, if enough to issue certiorari
- 1288. All reasons not set out, no ground for certiorari
- 1289. Existence of Lis-Dispute is judicial or quasi judicial
- 1290. High Court not to act as court of appeal, while issuing certiorari
- 1291. Rules made by governor will apply to quasi judicial acts
- 1292. Quasi judicial bodies how to function
- 1293. Quasi judicial Act
- 1294. Standard of reasons
- 1295. Point not raised in petition normally cannot be urged but was allowed to be urged in this case
- 1296. Quasi judicial body Should give hearing and Reasons
- 1297. Administrative Tribunal and Court
- 1298. High Court should not correct the error but should remand the Case

NECESSARY AND PROPER PARTIES

- 1299. Party in whose favour order is passed is necessary party
- 1300. Parties not added under Article 226 cannot be added in proceedings under article 133
- 1301. Territorial jurisdiction
- 1302. Final order decision under article 133 is a final order
- 1303. A Person whose Fundamental Rights have not been violated may also file a writ
- 1304. Permit not in existence writ will not lie
- 1305. Disputed title writ cannot be filed
- 1306. Point not in issue should not be decided
- 1307. Alternate relief can be claimed
- 1308. Judge should not be a party to the cause
- 1308A. Bias, Point should be taken in petition

MALAFIDE

- 1309. Malafide vitiates every proceedings
- 1310. Source of information should be given
- 1311. Allegations of malafide made, affidavit to rebut should be filed

1312. Bias, what it signifies
1313. Fair opportunity to be heard
1314. Right to cross examine is not part of natural justice
1315. Broad Requirements of natural justice
1316. Person choosing not to attend the court cannot complain
1317. Personal bias violates natural justice
1318. Impartial treatment to be given
1319. Judicial or quasi-judicial bodies should not violate principles of natural justice
1320. Opportunity to show cause
1321. Rules of Natural justice vary from case to case
1322. Case of the prosecution should be stated, evidence not brought to the notice other party should not be acted upon
1323. Fair opportunity, what is
1324. Disciplinary action, natural Justice to be observed
1325. Refusal to record evidence does not violate natural justice
1326. Records should be before the Courts
1327. Writ of Prohibition—Scope of
1328. Question of jurisdiction not involved writ of Prohibition may not be issued
1329. Purpose of
1330. Person under detention if not produced in court when so ordered contempt proceeding may be launched
1331. Writ will issue if a person is detained without authority of law
1332. Detention order is an executive order
1333. Writ of quo warranto
1334. Writ of mandamus can be issued when there is breach of some statutory duty
1335. Liability arising out of breach of Contract
1336. Tax illegally recovered, Mandamus can be issued for refund
1337. Some Instances
1338. Scope of Article 227
1339. Discretion under Article 227 not properly exercised Supreme Court may interfere
1340. Unlawful Disposition, High Court can interfere under Article 227
1341. Tribunal Meaning of
1342. Tribunal cannot ignore the judgment of High Court
1343. Article 227 does not confer appellate jurisdiction
1344. Scope of article 32
1345. Relief granted under article 32 when there was dispute regarding the validity of a regulations
1346. Article—32 "Any Court"—Meaning of
1347. Articles 226 and 32 Compared
1348. Order passed by High Court cannot be challenged

under Article 32

- 1349. Procedure *ultravires* Article 32 may be invoked
- 1350. Infringement by private parties
- 1351. Contractual rights not covered
- 1352. Declaratory order can be made under Article 32
- 1353. Adequate remedy under article 32
- 1354. Article 32 does not take away the Right of ordinary court to adjudicate
- 1355. Breach of law is not a ground for invoking Article 32
- 1356. Threat of recovery of tax, Article 32 is applicable
- 1357. Writ petition dismissed in High Court, Supreme Court may interfere under article 32 if fundamental right involve
- 1358. Article 136 cannot be circumvented by restoring to Article 32
- 1359. Intervener has no right to reply
- 1360. Petitioner to be kept strictly with him pleading
- 1361. Misconstruction of a statute cannot be challenged under article 32
- 1362. Writ can be filed when the fundamental right is violated or when there is a threat of violation
- 1363. Writ lies only if there is infringement of Article 32
- 1364. Act of legislature nullifying the decision under 32 is legal
- 1365. Appropriate proceeding, meaning of
- 1366. Executive order passed on subjective satisfaction not liable to be quashed
- 1367. Question of fact and Article 32
- 1368. Taxing authority entitled to act judicially, no violation of fundamental rights
- 1369. Taxing law when can be challenged under article 32
- 1259. Scope of Article 226.

Article 226 is couched in comprehensive phraseology and it *ex facie* confers a wide power on the High Courts to reach injustice where ever it is found. The Constitution purposely used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature" for the said expression does not equate the writs that can be issued in India with those in England but only draws an analogy from them. That apart High Courts can also issue directions orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a

construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article, some limitations are implicit in the article and other may be evolved to direct the article through defined channels. This interpretation has been accepted by the Supreme Court in *T. C. Basappa v. Nagappa* 1955-1 S.C.R. 250 and many other cases, the latest being *Dwarka Nath v. Income Tax Officer* A.I.R. 1966 S. C. 82.

QUESTION OF FACT

1260. Property whether public or private question cannot be raised in writ proceedings.

The question whether the trusts are public or private trusts or the properties are private or trust properties are question which invoke investigation of complicated facts and recording of evidence and such investigation cannot be taken in writ proceedings. Under Article 226 and 227, the High Court cannot sit in appeal over the findings recorded by a competent tribunal in a departmental enquiry: *State of Orissa v. Murlidhar*, A.I.R. 1963 S.C. 504.

Under Article 226 of the Constitution the High Court is not precluded from entering upon a decision of question of fact raised by the petition. But where an enquiry into complicated questions of fact arises in a petition under Article 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court: *State of Orissa v. (Miss) Binapani Devi*, A.I.R. 1967 S.C. 1269.

In entertaining petitions for writ of certiorari it is necessary to remember the findings of fact recorded by special tribunals which have been clothed with jurisdiction to deal with them should be treated as final between the parties, unless of course, it is shown that the impugned finding is based on no evidence: *Syed Yakoob v. Radhakrishnan*, A.I.R. 1964 S.C. 477.

The High Court should not decide disputed question of fact but should send the case back: *Dwarka Nath v. Income Tax Officer* A. I. R. 1966 S. C. 142.

What functions were actually being performed by the employee is a question of fact and the High Court is not bound to interfere: *Andhra Scientific Co., Ltd., v. Seshagir Rao*, A.I.R. 1967 S.C. 408.

The High Court should not interfere on the mere ground that evidence is not enough to sustain the findings of fact: *State of Orissa v. Murlidhar* A.I.R. 1963 S.C. 404.

1261 Alternate Remedy if bars a writ.

As observed by the Supreme Court in *A. V. Venkateswaran Collector of Customs Bombay v. Ram Chand Sobhraj Wadhvani* (1962) 1 S. C. R. 753 the rule that a party who applies for the issue of a high prerogative writ should before he approaches the Court have exhausted other remedies open to him under the law, though not one which bars the jurisdiction of the Court to entertain the petition or to deal with it, but is a rule which Courts have laid down for the exercise of their discretion: *British I. S. Co. v. Jasjit Singh*, A.I.R. 1964 S. C. 1451.

The High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the Statute to be by passed, and will leave the party applying to it to seek resort to the machinery so set up : *Than Singh v. Superintendent of Taxes*, A.I.R. 1964 S.C. 1422.

The fact that the aggrieved party has another adequate remedy may be taken into consideration by the superior Court in arriving at a conclusion as to whether it should, in exercise of its discretion issue a writ of certiorari to quash the proceedings and decisions of inferior Courts. But the existence of other adequate legal remedies is not per se a bar to the issue of certiorari and in a proper case it may be the duty of the superior Court to issue a writ of certiorari to correct the errors of an inferior Court of Tribunal called upon to exercise judicial or quasi-judicial functions and not to relegate the petitioner to other legal remedies available to him : *U. P. State v. Mohd Nook*, A.I.R. 1958 S.C. 86; *Basant Kumar v. Eagle Rolling Mills* A.I.R. 1964 S.C. 1260.

The Supreme Court held that the respondents had no effective remedy, for they could not file an appeal without depositing as a condition precedent a large amount of penalty imposed on them: *Collector of customs v. M/S Shantilal Chhokla* A.I.R. 1966 S.C. 197.

Resort to the High Court in exercise of its extra-ordinary jurisdiction conferred or recognised by the Constitution in matters relating to assessment levy and collection of income tax may be permitted only when questions of infringement of fundamental rights arise or where on undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess : *Shivram Poddar v. Income Tax Officer*, A.I.R. 1964 S.C. 1095.

It is true that the High Court would not ordinarily entertain a petition under Article 226 of the Constitution where an alternative remedy is open to the aggrieved party : *Municipal Council Khurani v. Kamal Kumar* A. I. R. 1965 S. C. 1321

The Special remedy provided in Article 226 is not intended to supersede completely the modes of an action in a civil Court or to deny defence legitimately open in such actions: *State of Madhya Pradesh*, A. I. R. 1964 S. C. 1006.

1262. Interlocutory orders.

Writs Under Article 226 may not be issued in Election matters.

It is well settled that where there is another remedy provided, the Court may properly exercise its discretion in declining to interfere under Article 226. Under the election law as it stood prior to amendment in 1956, the correctness of the decision was challenged in applications under Article 266 and in further appeals to the Supreme Court, with the result that by the time the matter was finally decided, the life of the Legislatures for which the election was held would have itself very nearly come to an end, rendering the proceedings infructuous. A signal example of a case of this kind is to be found in the decision reported in *Bhikaji Keshao Joshi v. Brijlal Nand Lal* 1955-2 S.C.R. 428. It is to remedy this defect that the parliament amended the law by providing a right to the High Court under Section 116-A and its intention is obviously that proceedings before the Tribunal should go on with expedition and without interruption, and that any error in its

decision should be set right in an appeal under that section. It would be proper exercise of discretion under Article 226 to decline to interfere with interlocutory orders: *N. T. Thevar v. G. Raja Nainar and another* A.I.R. 1959 S.C. 422.

1263. Interim order should not be passed on a holiday

It is true that if justice demands that the court should receive a petition even on Sunday, the Court should and ought to accept the petition; but having regard to the fact that the petitioners postponed the filing of the application until Sunday night it would have been proper if the High Court had not passed an interim order on the said night: *Principal v. Kalyan* A.I.R. 1965 S.C. 707.

Discretion exercised by Educational Authorities should not be interfered with.

It is hardly necessary to emphasise that in dealing with matters relating to orders passed by authorities of educational institutions under Article 226 of the Constitution the High Court should normally be very slow to pass ex parte interim orders, because matter falling within the jurisdiction of the educational authorities should normally be left to their decision and the High Court should interfere with them only when it thinks it must do so in the interests of justice.

Where the question involved is one of interpreting a regulation framed by the Academic Council of a university, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the regulation in question is capable of two constructions, and it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by the said authorities on the relevant regulation appears to the High Court less reasonable than the alternative construction which it is pleased to accept: *Principle Panna College v. Kalyan Srinivas Raman*, A. I. R. 1966 S. C. 707.

Refusal to issue Rule nisi by trial judge, Interference can be made under Article 226.

Though the court should not interfere in a matter involving refusal to issue rule nisi but where it has done so under Article 226, the Supreme Court will not interfere: *Himansu Kumar v. Jyoti Prakash* A. I. R. 1964 S.C. 1636; *Kalyan Peoples Co-operative Bank Ltd. v. Dulhan Bibi Aqal*, A. I. R. 1966 S. C. 1472.

A Court of Wards is not under statutory obligation to hand over the properties to any person where possession is in their control. In such circumstances mandamus does not lie: *Rala Ram Chandra Raddy and Another v. Raddi Shankaramma and another*.

Refusal by the appropriate Government to make a reference in an industrial dispute for adjudication is no ground for issuing a mandamus *Bambay Union of Journalists and another v. State of Bombay and another*, (1964) 1 LLJ. 351.

An Ex-Principal of college challenging the appointment of another person in his place as Principal not showing that he has any right under any of the articles of the statute for appointment or reinstatement, will not be entitled to get a mandamus issued: *Rai Shivendra Bahadur v. Naldnda College*, 1962 (1) L.L.J. 247.

1264. Res Judicata in writ Proceedings.

The Supreme Court has laid down in the case of *Raj Lakshmi Devi v. Banamali Sen*, 1953 S. C. R. 154 that the principle underlying res judicata is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though the subject matter of the dispute was not exactly the same as the two proceedings. In that case the rule of *res judicata* was made applicable to litigation in land acquisition proceedings. In that case the general principles of law bearing on the rule of *res judicata*, and not the provisions of S. 13 of the Code of Civil Procedure were applied to the case. The rule of *res judicata* is meant to give finality to a decision arrived at after due contest and after hearing the parties interested in the controversy. Where the question decided by the Court on the previous occasion was substantially a question affecting the whole Legislature of the State of Bihar and was of general importance and did not depend upon the particular constitution of the committee of Privileges, it cannot be said that the question decided by the Court on the previous occasion had not been fully debated and had not been decided after due deliberation. The fact that there was difference of opinion and one of the Judges constituting the Court held another view only shows that there was room for difference of opinion but it was a judgment of the Court nevertheless which binds the petitioner as also the Legislative Assembly of Bihar. For the application of the general principles of *res judicata*, it is not necessary to go into the question whether the previous decision was right or wrong: *M. S. M. Sharma v. Shree Krishna and others*, A. I. R. 1960 S. C. 1186.

Again the questions about the applicability of the doctrine of *res judicata* in the petitions filed under Article 32 came before the Court in *Daryao v. State of U. P.*, 1962 I. S. C.R. 574 and in that case it was held that where the question under article 226 is considered on the merits as a contested matter and dismissed by the High Court the decision pronounced is binding on the parties, unless modified or reserved by appeal or other appropriate proceedings under the Constitution and so, if the said decision was not challenged by an appropriate remedy provided by the Constitution a writ petition filed in respect of the same matter would be deemed to be barred by *res judicata*. Therefore, there can be no doubt that the general principle of *res judicata* applies to writ petition filed under Article 32 or Article 226. The application of the doctrine of *res judicata* to the petitions filed under Article 32 does not in any way impair or effect the content of the fundamental rights guaranteed to the citizen of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law: *Amalgamated Coalfields v. Janapala Sabha*, A. I. R. 1964 S. C. 1013.

1265 Constructive Res judicata

The appellant did not take all the points in the writ Petition and thought of taking new points in appeal by special leave. When leave was refused to him by the Supreme Court to take those point in appeal, he filed a new petition in the High Court and took those points, and finding that the High Court had decided against him on the merits on those points, he came to the Supreme Court. At the hearing of the appeal, he filed another petition asking for leave from the Court to take some more additional points and that shows that if constructive *res judicata* is not applied to such proceedings a party

1267. Scheme settled by Court for the administration of religious property can be challenged in writ proceedings

It is wrong to say that there is no provision prescribed in the Act for the modification of schemes dealing with religious property. Section 62(3) (a) specifically provides that any scheme for the administration of a religious institution settled or modified by the Court in a suit under sub-section (1) or on an appeal under sub-section (2) of any scheme deemed under Section 103, clause (d), to have been settled or made by the Court may, at any time, be modified or cancelled by the Court on an application made to it by the Commissioner, by the trustee or any person having interest in it. Thus the consistency of the scheme with the relevant provisions of the latter Act can be examined in writ proceedings: *Rajendraswami v. Commr. H. R. & C. E.*, A. I. R. 1965 S. C. 502.

1268. Decision given under Article 226 based on assumption can be set aside

The assumption made by the High Court that because persons who had obtained a smaller percentage of marks at the viva voce test in the year 1962 were selected out of the candidates who had applied for the competitive examination - and for promotion and the persons who had obtained a larger number of marks were omitted, the Rules were infringed, was not substantiated. For selection at the competitive examination marks obtained at the viva voce test together with the marks obtained at the written examination were the sole test, but for the purpose of promotion the Public Service Commission had to take into account the assessment of suitability for promotion in the light of the general record of the candidate appearing from their record of service and the opinion expressed by the High Court under whom the candidate had served.

The order of the High Court issuing writs directing the inclusion of the six petitioners before them in the list prepared by the Commission for selection of the appointees to the cadre of Munsiffs in the Mysore State Judicial Service was set aside as it was based on assumption: *State of Mysore v. K. N. Chandrashekhara*, A. I. R. 1965 S. C. 532.

1269. Dispossession ordered by executive fiat-Writ will lie

The land belonged to the State and with the permission of the State the petitioner's father built the Dharamsala, temple and shops and managed the same during his life time. After his death the petitioners and other members of the joint family, continued the management. The Court held that as the petitioners were not trespassers in respect of the Dharamsala, temple and shops, they cannot be removed by an executive fiat. If the State thinks that the constructions should be removed then it should take appropriate legal action for the purpose. It cannot by an executive order, dispossess the petitioner: *Bishan Das v. State of Punjab*, A. I. R. 1961 S. C. 1574.

1270. Final order to be challenged in writ proceeding, writ cannot be issued to original authorities.

It is the appellate order which is the operative order after the appeal is disposed of and should be challenged under Article 32 or Article 226. This matter has been considered by the Supreme Court a number of occasions after the decision in *Saka Venkata Rao's case* 1953 S.C.R. 1144.

In *Thangal Kunju Musaliar's case*, 1955 (2) S.C.R. 1196 though the point was not directly in issue the matter was considered at p 213. In *Commr. of Income Tax Bombay v. Amril Lal Bhogilal and Co.*, 1959 S.C.R. 718 a similar question arose as to the merging of an order of the income-tax Officer into the order of the appellate Assistant Commissioner passed in appeal in connection with the powers of the Commissioner of Income tax in revision. The Court observed as follows in that connection at page 720.

'There can be no doubt that, if an appeal is provided against an order passed by a tribunal the decision of the appellant authority is the operative decision in law.'

The matter was considered again by the Court in *Madan Lal v. Secretary to the Government*, A.I.R. 1962 S.C. 1513 in connection with an order of the Central Government in revision under the Mineral Concessions Rules 1949, framed under the Mines and Minerals Regulation and Development Act No. 53 of 1948, and it was held that when the Central Government rejected the review petition against the order of the State Government under the Mineral Concession Rules it was in effect rejecting the application of the appellant of that case for grant of the mining lease to him. The question of the merger of the original order with the appellate order was also considered in the case, and it was pointed out on the basis of Rule 60 of the Mineral Concession Rules that it is the Central Government's order in review which is the effective and final order.

In the *State of Uttar Pradesh v. Mohammed Nook* 1958 S.C.R. 595 : a public servant was dismissed before the Constitution had come into force and his appeal from the order of dismissal was also dismissed before the Constitution came into force. His revision against the order in appeal was dismissed when the Constitution had come into force and the question that arose in that case was whether the dismissed public servant could take advantage of the provision of the Constitution because the revisional order had been passed after the Constitution came into force. In that case, the Supreme Court held that the order of dismissal passed before the enforcement of Constitution could not be said to have merged in the orders in appeal and in revision. It was pointed out that the order of dismissal was operative of its own strength as from April 20, 1945 and the public servant stood dismissed as from that date and therefore it was a case of dismissal before the Constitution came into force and the public servant could not take advantage of the provisions of the Constitution in view of the fact that his dismissal had taken place before the Constitution had come into force. But the Court pointed out in *Madan Gopal Rungla's case* A.I.R. 1962 S.C. 1513 that *Mohammad Nook's case* S.C.R. 595 was special case, which stands on its own fact. The argument based on the principle of merger was repelled by the Court in that case on two grounds namely (i) that the principle of merger applicable to decrees of Courts would not be applicable to departmental tribunals, (ii) that the original order would be operative on its own strength and did not gain greater efficacy by the subsequent order of dismissal of the appeal or revision. In effect this means that even if the principle of merger were applicable to an order of dismissal like the one of *Mohammad Nook's case* 1958 S.C.R. 595; A. I. R. 1958 S.C. 86, the fact would still remain that the dismissal was before the Constitution came into force and therefore the person dismissed could not take advantage of the

provisions of the Constitution, so far as that dismissal was concerned that case was thus a special case. The consistent view taken by the Court in *Musaliar's Case* 1955-2 S. C. R. 1196 as well as in *Amritlal Bhogilal's case* A. I. R. 1958 S.C. 868 is that the order of the original authority must be held to have merged in the order of the appellate authority and it is only the order of the appellate authority which is operative after the appeal is disposed of. Therefore, if the appellate authority is beyond the territorial jurisdiction of the High Court it would not be open to it, to issue a writ to the original authority, which is within its jurisdiction so long as it cannot issue a writ to the appellate authority. See also *Collector of Customs, Calcutta v. East India Commercial Co. Ltd. Calcutta*, A. I. R. 1963 S.C. 1124.

1271. High Court should not encourage circumvention of ordinary procedure in writs

High Court should be slow in encouraging parties to circumvent the special provisions made for providing appeals and revisions in respect of orders which they seek to challenge by writ petition under Art. 226. When the writ petitions were admitted because they raise a question of some importance which had already been raised by some appeals properly brought before the Court under Art. 136 the Supreme Court held that presentation of petitions was proper : *British I.S.N. v. Jasjit Singh*, A.I.R. 1964 S.C. 1451.

1272. Various assessment orders challenged in one writ. One court fee is enough in appeal to Supreme Court

The case in Supreme Court originated out of one petition under Article 226 of the Constitution challenging the validity of various assessment orders. It can not be said that there were as many proceedings as there were assessment orders for the petitioner had by a single petition challenged them all together. When an appeal is taken to the Supreme Court from the judgment of the High Court in such a petition, it is not possible to say that there are more appeals than one. The appellant is liable only to pay one set of court fee and other charges as in a single appeal: *Chandra Bhan Gosain v. The State of Orissa and others*, A.I.R. 1967 S.C. 707

1273. Contempt proceedings in a legislature can be challenged under Article 226, no contempt of House

Where the contempts alleged to have been committed by a citizen who is not a member of the House outside the four walls of the legislative chamber, a Judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on a person or issuing any process against the petitioner for its contempt, or for infringement of its privileges and immunities, or who passes any order on such petition, does not commit contempt of the said Legislature and the said Legislature is not competent to take proceedings against such a Judge in the exercise and enforcement of its power, privileges and immunities: *In re Article 143, Constitution of India*, A.I.R. 1965 S.C. 747.

1274. Manifest injustice should be shown

Where the High Court came to the conclusion that there was delay in raising the objections the Supreme Court did not interfere in the matter and also observed that relief under Article 226 is not to be given if there is no manifest injustice : *Ajit Singh v. State of Punjab*, A.I.R. 1967 S.C. 856

1275. Question of Taxability should not be decided under Article 226

Where the Sales Tax Officer had not dealt with the question at all, it is not the function of the High Court under Article 226 in taxing matters to constitute itself into an original authority or an appellate authority to determine questions relating to the taxability of a particular turnover. The proper order in the circumstances of the case is to quash the order of assessment and send the case back to the Sales Tax Officer to dispose of it according to law. The High Court should not encourage the tendency on the part of the assesses to rush to the High Court after an assessment order is made. It is only in very exceptional circumstances that the High Court should entertain petitions under Article 226 of the Constitution in respect of taxing matters after an assessment order has been made: *Vijay Singh v. State of Maharashtra*, A.I.R. 1966 S.C. 141 at page 142.

ADMINISTRATIVE AND JUDICIAL ORDERS

1276. Order confirming sale is a judicial order

The question whether an order is judicial or administrative depends upon the nature of the order that is passed. An order according sanction to a sale undoubtedly involves a discretion and cannot be termed merely a ministerial order, because before confirming the sale the court has to be satisfied particularly where the confirmation is opposed, that the sale has been held in accordance with the conditions subject to which alone the liquidator has been permitted to effect it, and that even otherwise the sale has been fair and has not resulted in any loss to the parties who would ultimately have to share the realisation.

The mere fact that the order is passed in the course of the administration of the assets of the company and for realising those assets is not by itself sufficient to make it an administrative, as distinguished from a judicial order. For instance, the determination of amount due to the company from its debtors which is also part of the process of the realisation of the assets of the company is a matter which arises in the course of the administration. It does not on that account follow that the determination of the particular amount due to from a debtor who is brought before the court is an administrative order.

It is perhaps not possible to formulate a definition which would satisfactorily distinguish, in this context, between an administrative and a judicial order. That the power is entrusted to or wielded by a person who functions as a Court is not decisive of the question whether the act or decision is administrative or a judicial. An administrative order would be one which is directed to the regulation or supervision of matter as distinguished from an order which decides the rights of parties or confers or refuse to confer rights to property which are the subject of adjudication before the Court. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority, particularly if that authority were a court, and if the discretion has to be exercised on objective, as distinguished from a purely subjective, consideration, it would be a judicial decision. It has some times been said that the essence of a judicial proceeding or of a judicial order is that there should be two parties and a lis between them which is the subject of adjudication, as a result of that order or a de-

cision on an issue between a proposal and an opposition. No doubt, it would not be possible to describe an order passed deciding a lis before the authority that it is not a judicial order but it does not follow that the absence of a lis necessarily negatives the order being judicial. Normally where there are two points of view presented to the Court by two contending parties or interest and the Court was called upon to decide between them. The order will be a judicial order. An order confirming sale is a judicial order and not an administrative one: *Shankar Lal v. Shankar Lal*, A. I. R. 1965 S. C. 507.

1277. Sufficiency of evidence cannot be gone into.

The High Court would be in error in quashing the order of the State Government retiring a civil servant compulsorily on the ground that the evidence during the inquiry proceedings by the Tribunal was not sufficient to establish the charges against him beyond reasonable doubt: *State of Madras v. G. Sunba Ram*, A.I.R. 1965 S.C. 1103.

1278. Writ not to be granted if there is breach of only contractual obligation.

No one is entitled to move the High Court for grant of a writ in the nature of mandamus under Article 226 of the Constitution unless there is a breach of a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. Any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution.

Before Mandamus can issue to a public servant it must, be shown that a duty towards the appointment has been imposed upon the public servant by statute so that he can be charged thereon: *Lekhraj Satkrandras Ilwani v. Dy. Custodian, Bombay*, A. I. R. 1966 S. C. 334.

1279. Consequential relief can be given.

The High Courts have power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law: *State of Madhya Pradesh v. Bhailal Bhai*, A. I. R. 1964 S.C. 1008 at page 1011.

1280. Delay and Limitation—Period prescribed under Limitation Act can be taken as a guide.

The maximum period fixed by the legislature as the time within which the relief may be claimed in a civil court may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay reasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known and if an application is not brought within this limit delay in making these applications should be considered unreasonable: *State of Madhya Pradesh v. Bhailal*, A. I. R. 1964 S. C. 1006 at page 1012.

But in the absence of statutory rule the period prescribed for preferring an appeal to the High Court is a rough measure in each case and the primary question is whether the applicant has been guilty of laches or undue delay. A rule of practice cannot prescribe a binding rule of limitation; it may only indicate how discretion will be exercised by the Court in determining whether having regard to the circumstances of the case, the applicant has been guilty of laches or undue delay: *Chandra Bhusha and another v. The Deputy Director of Consolidation Uttar Pradesh (Regional) Lucknow and others*, A. I. R. 1967 S. C. 1272.

WRIT OF CERTIORARI

1291. Scope of:

Adverting to the Scope of a writ of certiorari in common law, the Court, in *Hari Vishnu Kamath v. Syed Ahmed Ishaque* 1951-1 S.C.R. 1104 at p.p. 1121, 1123 laid down the following propositions:

- (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.
- (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.
- (3) The Court issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of facts reached by the inferior Court or Tribunal, even if they be erroneous.
- (4) An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law.

This view was followed in *Nagendra Nath Bora v. The Commr. Hills Division*, 1958 S.C.R. 1240 : *Satyanarayan v. Maliharjun*, A.I.R. 1960 S.C. 137, *Shri Ambica Mills Co. v. S. B. Bhut*, A.I.R. 1961 S.C. 970 and *Provisional Transport Services v. State Industrial Court Nagpur* A.I.R. 1963 S.C. 114.

Sinha J. in *Nagendra Nath Bora's* case 1959 S.C.R. 1240 while dealing with the limit of writ of certiorari observed:

"One of the grounds on which certiorari may be invoked is an error of law apparent on the face of the record and every error either of law or fact, which can be corrected by a superior Court, in exercise of its statutory powers as a Court of appeal or revision."

This decision assumes that the scope of a writ in the nature of certiorari or an order or direction to set aside the order of an inferior Tribunal under Art 226 of the Constitution is the same as that of a common law writ of certiorari in England. This decision practically accepts the opinion expressed by the Court in *Hari Vishnu Kamath's* case (1955) 1 S.C.R. 1104. The only addition it introduces is the antithesis it makes between "error of law and error of fact" and "error of law apparent on the face of the record".

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by the Supreme Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals: these are cases where orders are passed by inferior Courts or tribunals without jurisdiction or in excess of it, or where there is failure to exercise jurisdiction.

A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ but not an error of fact however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari. The finding of fact recorded by a Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was not sufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised: see *Kaushalya Devi v. Backittar Singh*, A. I. R. 1960 S. C. 1168; *Syrd Yakob v. Radha Krishnan* A. I. R. 1964 S. C. 477.

1282. Manifest error apparent on the face of the record

Venkatarama Ayyar J. attempted to define the expression in *Hari Vishnu Kumath's case* (1955) 1 S.C.R. 1104 thus:

"that no error could be said to be apparent on the face of the record if it was not self evident, and if it required an examination or argument to establish it". But this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. Das Gupta J., made an attempt to define the expression in *Salyanarayana v. Mallikaraju*, A.I.R. 1960 S.C. 147 at page 141 thus:

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record".

This test also may break, for what is complex to one judicial mind may be clear and obvious to another; it depends upon the equipment of a particular Judge. In the ultimate analysis the said concept is comprised of many imponderables: it is not capable of a precise definition, as no objective criterion can be laid down, the apparent nature of the error, to a large extent, being dependent upon the subjective element. So too, in some cases the boundary between error of law and error of fact is rather thin. The court in the case *K. M. Sharma Proprietor Transport Tanjore, Madras State v. The S. R. V.S. (P) Ltd and others* A.I.R. 1963 S.C. 1626 did not define the concept of "error of law apparent on the face of the record", but it left at it has always been done, to be decided in each case.

In *Champsey Bhara and Co. v. Jirraj Ballo Spinning and Weaving Co;* 1923 A.C. 480 : A.I.R. 1923 P.C. 66, Lord Dunedin observed that an error on the face of an award means that the Court must first find whether there is any legal proposition which is the basis of such an award. He also said that where an award is challenged upon such a ground it is not permissible to read words into it or to draw inferences and the award or the order must be taken as it stands. Tucker, J said the same thing in *James Clark (Brush Materials) Ltd. v. Carlers (Merchants) Ltd;* 1914-1 K.B. 566 the Court said reading the impugned order it is difficult to say what legal proposition it contains in respect of which it can be said that there is an error of law apparent on the record. There is no infirmity in the order of Controller" *B.B. & D. Mfg. Co. v. L.K. Bose*, A.I.R. 1967 S.C. 361

1283. Executive Instructions—Breach of—Writ of certiorari does not lie

Where the Government Order contains merely executive or administrative directions their breach, even if patent, would not justify the issue of a writ of certiorari. The executive orders properly recalled do not confer any legal enforceable rights on any persons and impose no legal obligations on the subordinate authorities for whose guidance they are issued. The result is even if any of the directions contained in the order is found to have ignored or misapplied, the applicant for a permit cannot claim any relief by way of a writ of certiorari. The direction itself, though valid, and in a sense binding on the subordinate authorities is not a statutory rule and has not the force of law; and so its misconstruction cannot be said to be an error of law; *R. Abdula v. State*, A. I. R. 1959 S. C. 896.

In *M/s. Ruman and Raman v. State of Madras*, (1959) Supp. (2) S. C. R. 227 the Court had to consider certain orders and directions issued under Section 43 of the Motor Vehicles (Madras Amendment) Act, 1948. The Court held that such orders did not have the status of law regulating the rights of parties and must partake of the character of administrative orders. It was further held that there could be no right arising out of mere executive instructions, much less a vested right, and if such ins-

tructions were changed pending any appeal, there would be no change in the law pending the appeal so as to affect any vested right of a party. Similarly when the rules being mere administrative instructions dealing the relations between private colleges and the Government in the matter of grant-in-aid to private colleges, no teacher of a college has any right under the Rules to ask either for their enforcement or for their non-enforcement and a writ will not lie : *State of Assam v. Ajit Kumar Sarma*, A. I. R. 1965 S. C. 1196.

1284. Statutory rules and executive directions, distinction

The distinction between statutory rules having the force of law and administrative or executive directions has been explained in the decision of the Supreme Court in *Nagendra Nath Bora v. Commr. of Hills Division and Appeals, Assam*, A. I. R. 1958 S. C. 398. In that case it was urged before the Court that appellate authority did not observe the specific instructions that tribal people had to be given certain preference, or that person on the debarred lists like smugglers should be kept out, it was held that

"all these are only executive instructions which have no statutory force. Hence even assuming, though it is by no means clear, that those instructions have been disregarded, the non-observance of those instructions cannot affect the appellate authority to make its own selections or affect the validity of the order passed by it."

Where the State Government has issued executive instructions for the guidance of the transport authorities, they are not in the nature of statutory rules having the force of law : *R. Abdula v. State*, A. I. R. 1959 S. C. 896.

The view that the Court took about the character of the relevant Government order in *Abdula* case Supra is in conformity with the decision of the Supreme Court in the case of *Raman and Raman v. State of Madras*, A. I. R. 1959 S. C. 694. In that case the Court held that Section 43A of the Act has been enacted to enable the State Government to issue administrative or executive orders or directions which cannot be equated with statutory rules

1285. Quasi judicial and Administrative bodies

It is well settled that a writ of certiorari can be issued only to quash a judicial or a quasi judicial act and not an administrative act. It is, therefore, necessary to notice the distinction between the said two categories of acts. The relevant criteria has been laid down with clarity by Atkin L. J. in *Rex v. Electricity Commissioners* 1924-1 K. B. 171 elaborated by Lord Justice Scrutton in *Rex v. London County Council* 191-2 K. B. 215 and authoritatively restated in *Province of Bombay v. Khushaldas S. Advani*, 1950 S. C. R. 621 the said decisions laid down the following conditions to be complied with (1) The body of persons must have legal authority (2) the authority should be given to determine questions affecting the rights of subjects and (3) they should have a duty to act judicially. So far there is no dispute but in decided cases particularly in India, there is some mixing up of two different concepts viz administrative tribunal and administrative act. The question whether an act is a judicial act or an administrative one arises ordinarily in the context of the proceedings of administrative tribunal or authority. Therefore the fact that an order was issued or an act emanated from an administrative tribu-

nal would not make it anytheless a quasi judicial act if the above tests are fulfilled : *Dawarkadas v. Income Tax Officer*, A. I. R. 1966 S. C. 82.

The concept of a quasi judicial act has been conceived and developed by English Judges with a view to keep the administrative Tribunals and authorities within bounds, Parker J. in *R. v. Manchester Legal Aid Committee*, 1952-2 QB 313-423 brought out the distinction between judicial and administrative acts very vividly in the following passages :

"the duty to act judicially may arise in widely different circumstances which it would be impossible, and indeed inadvisable to attempt to define exhaustively. When on the other hand the decision is that of an administrative body and is actuated in whole or in part by questions of policy the duty to act judicially may arise in the course of arriving at that decision. Thus if in order to arrive at the decision the body concerned had to consider proposal and objections and consider evidence than there is the duty to act judicially in the course of that inquiry".

"Further an administrative body in ascertaining facts or law may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of and are not in accordance with the practice of a Court of law.

If on the other hand, an administrative body in arriving at its decision at no stage has before it any forms of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially".

"An administrative body in ascertaining facts or law may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of and are not in accordance with the practice of a Court of law. It is enough if it is exercising after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition. A body may be under a duty however, to act judicially (and subject to control by means of these orders) although there is no form of lis inter partes before it ; it is enough that it should have to determine a question solely on the facts of the particular case solely on the evidence before it, apart from questions of policy or any other extraneous consideration

Moreover an administrative body whose decision is actuated in whole or in part by questions of policy may be under a duty to act judicially in the course of arriving at the decision. If on the other hand an administrative body in arriving at its decision has before it at no stage any form of lis and throughout has to consider the question from the point of view of policy and expediency it cannot be said that it is under a duty any time to act judicially."

Halsbury 3rd Edition Vol. II P. 35

There are innumerable decisions of the Supreme Court where it issued a writ of certiorari to quash a quasi judicial act of an administrative tri-

bunal or authority the court set aside the order of the Andhra Pradesh State Government approving the order of nationalization of road transport made by the Andhra Pradesh Road Transport Under Taking in *Nageswara Rao v. Andhra Pradesh Road Transport Corporation* (1959) Supp (1) S. C. R. 319, the order of the Examination Committee cancelling the examination results on the ground that it did not give opportunity to the examinees to be heard before the order was made in *Board of High School and Intermediate Education U. P. Allahabad v. Ghanshyam das Gupta*, (1932) Supp (3) S. C. R. 31 and the order of the Revenue Board made in a revision petitions against the order of the Deputy Commissioner impounding the document without hearing the agrieved party in *Board of Revenue U. P. v. Sardarni Vidhyamati*, (1932) Supp(3) S. C. R. 50; A. I. R. 1962 S. C. 1217. In all these cases the Government, the Examination Committee and the Board of Revenue were administrative bodies but the acts impugned were quasi judicial ones for they had a duty to act judicially in regard there to. The law on the subject may be briefly stated thus. The provisions of a statute may enjoin on an administrative authority to act administratively of judicially. If the statute expressly imposes a duty on the administrative body to act judicially it is a clear case of a judicial act but the duty to act judicially may not be expressly conferred but may be inferred from the provisions of the Statute. It may be gathered from the cumulative effect of the nature of the right effected the manner of the disposal the objective criterion to be adopted the phraseology used the nature of the power conferred. In short a duty to act judicially may arise in widely different circumstances and it is not possible or advisable to lay down a hard and fast rule or an inflexible rule of guidance; *Dwarha Nath v. Income Tax Officer*, A. I. R. 1966. S. C. 82.

1286 Authorities can interfere only under express provision of law
When the authorities take the law into their hands and dispossess the petitioners by the display of force, it will exhibit a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property. As pointed out by the Court in *Wazir Chand v. State of Himachal Pradesh*, 1955-1 S.C.R. 408 'the State' or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In *Ram Prasad Narayan Sahi v. State of Bihar*, 1953 S.C.R. 1129 the court said that nothing is more likely to drain the vitality from the rule of law than legislation which singles out a particular individual from his fellow subjects and visits him with a disability which is not imposed upon the others : *Malik Ram v. State of Rajasthan*, A.I.R. 1961 S.C. 1575.

Where a person is in bona fide possession of property he cannot be removed except under authority of law. The Court held that the State clearly violated the fundamental rights of the petitioner by depriving them of possession of the dharamsala by executive orders. The orders were quashed and the State was restrained from interfering with the petitioners in the management of the dharamsala, temple and shops : *Bishan Das v. State of Punjab*, A.I.R. 1961 S.C. 1575.

1287. Mere erroneous decision, if enough to issue certiorari

In the case of *Parry and Co. Ltd. v. Commercial Employees, Association Madras* 1952-3 S.C.R. 519 at p. 525 : Mukherjea J., stated that no certio-

rary is available to quash a decision passed within jurisdiction by an inferior tribunal on the mere ground that such decision is erroneous but these observations can not be read as laying down a categorical and unqualified proposition that unless an error of jurisdiction is established, or fraud, proved, no writ of certiorari can be issued.

In fact, after the judgment of the Court was pronounced in the case of *Parry and Co. Ltd.* 1952-3 S.C.R. 519 the question about the jurisdiction of High Courts in issuing writs of certiorari under Art 226 has been frequently considered and there is a consensus of opinion in the judgments delivered by the Supreme Court ever since that a writ of certiorari can be issued where the order of the inferior tribunal is shown to suffer from an error which is apparent on the face of the record. As was observed by the Supreme Court in *Nagendra Nath v. Commissioner of Hills Division*, A. I. R. 1958 S.C. 398 "it is clear from an examination of the authorities of this Court, as also of the Courts in England, that one of the grounds on which the jurisdiction of the High Court on certiorari may be invoked, is an error of law apparent on the face of the record and not every error either of law or fact, which can be corrected by a superior Court, in exercise of its statutory powers as a Court of appeal or revision". It is, of course, difficult and indeed it would be inexpedient to lay down any general test to determine which errors of law can be described as errors of law apparent on the face of the record, vide *Syed Yakub v. K. S. Radakrishnan*, A. I. R. 1964 S.C. 477, if an order is shown to suffer from the infirmity of an error of law apparent on face of the record, the High Court would be justified in issuing a writ: *Prem Sagar v. S. V. Oil Company* .. I. R. 1965 S.C. 111.

1288. All reasons not set out, no ground for certiorari

It would not be safe to issue a writ of certiorari because some reasons which were urged before the High Court had not been expressly considered by the Appellate Tribunal. The High Court should naturally be slow in exercising its jurisdiction under Art. 226. If the order passed by the Appellate Tribunal which is challenged in writ proceedings suffers from infirmities which would justify the issue of a writ under the well recognised principles laid down by judicial decisions in that behalf, the High Court should and ought to interfere but the writs of certiorari should not be issued merely on the ground that all relevant reasons have not been set out in the judgment of the Appellate Tribunal or that the High Court would have taken a different view on the evidence adduced in the proceedings: *Sr. Rama Vilas v. Chandrasekharan*, A. I. R. 1965 S.C. 107.

1289. Existence of Lis-Dispute is judicial or quasi judicial

Where there is a lis between the person to whom the lease has been granted and the person who is aggrieved by the refusal, therefore *prima facie* it is the duty of the authority which has to review the matter to act judicially. As such it is incumbent upon it before coming to a decision to give a reasonable opportunity to the person before it, if this is not done, the parties are entitled to ask the Court to issue a writ in the nature of certiorari for quashing the impugned order: *Shirji Nathubhai v. Union of India*, A. I. R. 1960 S. C. 606.

1290. High Court not to act as court of appeal, while issuing certiorari.

While dealing with applications for writs of certiorari under Article 226

the High Court does not exercise the jurisdiction of an appellate Court. There is no doubt that in granting or refusing permits, the appropriate authorities are discharging a very important and a very serious quasi-judicial function. Large stakes are generally involved in these applications and so, it is of utmost importance that appropriate authority should consider all the relevant facts carefully and in its order should set out concisely and clearly the reasons in support of its conclusion. Even so it would, be inappropriate for the High Court to issue a writ of *certiorari* mainly or solely on the ground that all reasons have not been set out in the judgment of the appropriate authority. In entertaining writ petitions, the High Court must not lose sight of the fact that decisions on questions of fact under the Motor Vehicles Act have been left to the appropriate authorities which have been constituted into quasi-judicial Tribunal in that behalf and so, decisions rendered by them on questions of fact should not be interfered with under the special jurisdiction conferred on the High Courts under Article 226 unless the well recognised test in that behalf are satisfied: *Sri Rama Vilas Service Ltd. v. Chandasekaran and others*, A. I. R. 1965 S. C. 107.

The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.

But the departmental authorities are, if the enquiry is otherwise properly held the sole Judge of facts and if there be some legal evidence on which their findings can be based, the adequacy or legality of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution: *State of Andhra Pradesh v. Sree Rama Rao*, A. I. R. 1963 S. C. 1713.

The High Court is not competent to consider the question whether the evidence before the Tribunal and the Government is insufficient or unreliable to establish the charge against the civil servant. It could have considered only the fact whether there was any evidence at all which, if believed by the Tribunal, would establish the charge against the respondent. Adequacy of that evidence to sustain the charge is not a question before the High Court when exercising its jurisdiction under Article 226 of the Constitution. This view was reiterated in *Union of India v. H. C. Goel*, A. I. R. 1964 S. C. 364 and *State of Madras v. G. Sundaram*, A. I. R. 1965 S. C. 1103.

1291 Rules made by governor will apply to quasi judicial acts

The Rule which the Governor is authorised to make regulate not only the acts of the Governor or his sub ordinates in discharge of the executive power of the State Government but also govern the quasi-judicial functions entrusted to it. The concept of a quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some

acts in exercise of its executive power. The procedural rules by the Governor for the convenient transaction of business of the State Government apply also to quasi-judicial acts, provided those Rules conform to the principles of judicial procedure. *Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation and another*, A.I.R. 1959 S. C. 308.

1292. Quasi judicial bodies how to function

The mode of performing quasi-judicial acts by administrative tribunals has been the subject of judicial decision in England as well as in India. The House of Lords in *Local Government v. Arlidge*, 1915 A.C. 122 in the context of the Housing, Town Planning etc. Act, 1909 made the following observations at page 132:

"My Lords, when the duty of deciding an appeal is imposed those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same." In *New Prakash Trans Co., Ltd. v. New Swanra Transport Co. Ltd.*, A.I.R. 1957 S. C. 232 the Supreme Court reviewed the case law on the subject and came to the conclusion that the rules of natural justice vary with varying constitution of statutory bodies, and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion of what they may be but in the light of the provisions of the relevant Act. The Court re-affirmed the principle in A.I.R. 1958 S. C. 369. This aspect was again considered in *Gullapalli Nageswara Rao and others v. Andhra Pradesh State Road Transport Corporation and another*, A.I.R. 1959 S. C. 308.

1293. Quasi judicial Act.

What constitutes a quasi-judicial act" was discussed in the *Province of Bombay v. Khushaldas S. Advani* 1950 S.C.R. 621 : The principles have been summarised by Das, J. (as he was then) at p. 705 in these words :—

"The principles, as I apprehended them are :—

- (i) that if a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *lis* and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and
- (ii) that if a statutory body has power to do any act which will prejudicially, affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially"

In other words, while the presence of two parties besides the deciding authority will *prima facie* and in the absence of any other fact impose upon the authority the duty to act judicially, the absence of two or such parties is not decisive in taking the act out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially.

These principles have been acted upon by the Court in later cases; *Nagendra Nath v. Commissioner of Hills Division*, 1958 S.C.R. 1440; *G. Nagewara Rao v. Andhra Pradesh State Road Transport Corporation* 1959 Supp (1) S.C.R. 319; and *Shivji Nathubhai v. Union of India*, 1960 (2) S.C.R. 775. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively: See Observations of Parker, J; in *R. v. Manchester Legal Aid Committee*, 1952 (2) Q.B. 413 and of Supreme Court in *Board of High School v. Ghanshyam*, A.I.R. 1962 S.C. 1110.

The framing of scheme under the Motor Vehicle Act is not a judicial Act: *Kalyan Singh v. State of U. P.* A.I.R. 1962 S.C. 1183. See also *Board of Revenue v. Vijayawati*, A.I.R. 1962 S.C. 1217. See also *Shivji Nathubhai v. Union of India*, 1960 (2) S.C.R. 775; *Brij Lal v. Union of India*, A.I.R. 1964 S.C. 1643.

1293. Error of law.

Where the order is pronounced by a tribunal is an elaborate and well considered order and where he has taken into account the oral evidence, the documents produced before him and has also examined the probabilities of the case it cannot be said that there is any error apparent. *T. Prem Sagar v. Standard vacuum oil Co*, A.I.R. 1965 S.C. 111

Where there is an error apparent on the face of the order the High Court can exercise its jurisdiction under Article 226: *Union of India v. India Fisheries (P) Ltd.*, A.I.R. 1966 S.C. 35

It is of course not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it or may be even in disregard of it or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or apparent on the face of the record as such the court may need an argument to discover the said error, but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must on the whole be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. It is neither possible nor desirable to attempt to define or to describe adequately all cases of errors which can be corrected by a writ of certiorari.

High School and Intermediate Education v. Bigleshwar Prasad and another A.I.R. 1966 S.C. 875

1297. Administrative Tribunal and Court

There is an essential distinction between a Court and an administrative tribunal. A judge is trained to look at things objectively uninfluenced by consideration of policy or expediency, but an executive Officer generally looks at things from the stand-point of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act : *M. P. Industries v. Union*, A.I.R. 1966 S.C. 64

1298. High Court should not correct the error but should remand the case

Where the High Court comes to the conclusion that there is error apparent on the face of record it should not give its own finding on the evidence and pass its own order in that behalf. In writ proceedings if an error of law apparent on the face of the record is disclosed and a writ is issued, the usual course to adopt is to correct the error and send the case back to the special tribunal for its decision in accordance with law. It would, be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for it self and reach its own conclusions in matters which have been left by the legislature to the decisions of specially constituted tribunals : *State of Madras v. Thangarajan*, A.I.R. 1965 SC 111

NECESSARY AND PROPER PARTIES

1299. Party in whose favour order is passed is necessary party.

In a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties.

It would be against all principles of natural justice to make an order adverse to a party in whose favour the order is passed behind their back ; and any order so made could not be an effective one: *Udit Narain v. Board of Revenue*, A.I.R. 1963 S. C. 790.

1300. Parties not added under Article 226 cannot be added in proceedings under article 136.

Where in the special leave petition parties who should have been impleaded were not impleaded the Supreme Court did not bring them on record: *Udit Narain Singh v. Board of Revenue*, A.I.R. 1963 S. C. 796.

1301. Territorial jurisdiction.

It has now been well settled that under Article 226 of the Constitution, before it was amended the High Court had no jurisdiction to issue a writ thereunder against a person or authority unless the person or authority resided or was located within the territorial jurisdiction of the appropriate High Court. See *Election Commission, India v. Saka Venkata Rao* 1953 S.C.R. 1144 ; and *Lt Col. Khajoor Singh v. Union of India*, 1961 (2) S.C.R. 328 In the context of jurisdiction of the High Court to issue a writ of certiorari against orders made by a hierarchy of tribunal or authorities two situations arise, namely (i) Where the order of an appellate authority or tribunal having its office outside the territorial jurisdiction of the High Court is a nullity, and (ii) where the order of the original authority within the territorial jurisdiction of the High

Court merges with that of the appellate authority outside its territorial jurisdiction, in the former case the appropriate High Court can issue a writ against the order of the original authority and in the latter it cannot : See *Thargal Kurju Musaliar v. M. Venkatachalam Polli*, 1955 (2) S. C. R. 1196, *Collector of Customs, Calcutta* 1962 (2) S.C.R. 563 and *Shriram Jhunjhunwala v State of Bombay*, A.I.R. 1962 S.C. 670. The High Court has also held that in all cases after the appellate authority has disposed of the appeal, the operative order is of the final authority whether it has reversed, modified or confirmed the original order. Though Das C J. in *State of Uttar Pradesh v. Mohammad Nach*, 1953 S.C.R. 596 at P. 610 was not able to equate the orders made in departmental inquiries with decrees in civil Courts in the context of the doctrine of merger. The Court in *Collector of Customs Case*, 1963 (2) S.C.R. 563 distinguished that case. Where the appellate authority, though for convenience is having its head office in New Delhi, is factually and legally functioning under the State Act within the territorial jurisdiction of the High Court in such a case to hold that such an authority which is appointed by the State Government and holds office, entertains and disposes of appeals within the State is outside the jurisdiction of the High Court is to carry technicality beyond reasonable limits.

1302. Final order, decision under article is a final order.

A petition to the High Court invoking the jurisdiction under Article 226 is a proceeding quite independent of the original controversy. The controversy in the High Court in proceedings arising under Article 226 ordinarily is whether decision of or a proceeding before a Court or Tribunal or authority should be allowed to stand or should be quashed for want of jurisdiction or on account of errors of law apparent on the face of the record. A decision in the exercise of the jurisdiction, whether interfering with the proceeding impugned or declining to do so, is a final decision in so far as the High Court is concerned because it terminates finally the special proceeding before it: *Management of the Northern Railway Co-operative Credit Society Ltd Jodhpur v. Industrial Tribunal Rajasthan*, A. I. R. 1967 S. C. 1182.

1303. A person whose Fundamental Rights have not been violated may also file a writ.

Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any other purpose. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *State of Orissa v. Madan Gopal*, 1952 S. C. R. 28 the Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. In *Charanjit Lal Choudhuri v. Union of India*, 1950 S.C.R. 869 it has been held by the Supreme Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Courts for relief. The same principle will apply in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto

this rule may have to be relaxed or modified : *Calcutta Gas Co. (Prop.) Ltd. v. State of West Bengal*, A.I.R. 1961 S.C. 1044.

The existence of a right and the infringement thereof are the foundation of the exercise of the jurisdiction of the Court under Article 226 of the Constitution. The right shall ordinarily be the personal or individual right of the applicant : *State of Punjab v Suraj Parkash* A.I.R. 1963 S.C. 507.

Every citizen whose fundamental right is infringed by the State has a fundamental right to approach the Court for enforcing his right. If by a final decision of a competent Court his title to property has been negatived he ceases to have the fundamental right in respect of that property and; therefore, he can no longer enforce it: *Joseph Pothen v. The State of Kerala*, A.I.R. 1965 S.C. 1514.

Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. The existence of a right is thus the foundation of a petition under Article 226 : *State of Orissa v. Ram Chandra*, A.I.R. 1964 S.C. 685.

The Supreme Court in *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal*, (1962) Sopp. 3 S. C. R. 1 at p. 6 dealing with the question of locus standi of the appellant to file a petition under Article 226 of the Constitution in the High Court observed.

"The article in terms does not describe the classes of person entitled to apply there under; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified."

A personal right need not be in respect of proprietary interest: it can also relate to an interest of a trustee: *Gadde Venkateswara Rao v. Govt. of Andhra Pradesh and others*, A. I. R. 1966 S. C. 828.

1304. Permit not in existence writ will not lie.

Where the scheme was validly promulgated and became final with in the meaning of Section 68 'D(3), it had the effect of extinguishing all rights of the appellant to ply his vehicles under his permit and after the cancellation of his permit, he could not maintain a petition for a writ under Article 226 because a right to maintain such a petition postulates a subsisting personal right in the claim which the petitioner makes and in the protection of which he is personally interested : *Kalyan Singh v. State of U. P.*, A. I. R. 1962 S. C. 1183.

1305. Disputed title, writ cannot be filed

Before a party can complain of an infringement of his fundamental right to hold property he must establish that he has title to that property and if his title itself is in dispute and is the subject of adjudication in proceedings legally constituted, he cannot obviously put forward any claim based on his title until as a result of the inquiry he is able to establish his title: *Bokaro and Ramgarh Ltd. v. State of Bihar*, A. I. R. 1963 S. C. 516.

Minister was not acting judicially in discharging his duties, his Lordship accepted the aforesaid principle, and expressed his view on the doctrine of 'bias', thus at page 103:

"My Lords, I could wish that the use of the word 'bias' should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-earnded justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to the adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute."

The aforesaid decision accept the fundamental principle of natural justice that in the case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interested in one party or the other should not, even formally, take part in the proceeding though in fact he does not influence the mind of the person who finally decides the case. This is on the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The hearing given by the Secretary, Transport Department, certainly offends the said principle of natural justice and the proceeding and the hearing given to violate that principle; *G. Nageswara Rao v. A.P.S.R.T. Corpn.* A.L.R. 1959, S. C. 308.

1308 A. Bias-Point should be taken in petition

Where case of bias of the Chief Minister was not made out anywhere in the petition and the Court held that it would not be right to permit the petitioner to raise the question, for it depends on facts which were not mentioned in the petition but were put forward in a rejoinder to which the respondents had no opportunity to reply: *M.S.M. Sharma v. Shri Krishan Sinha*, A.L.R. 1959 S. C. 395.

MALAFIDE

1309. Malafide vitiates every proceedings

No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud: *Parla Singh v. State of Punjab*, A. I. R. 1964 S. C. 72.

Where the Presiding Officer against whom allegation of malafide are made gives evidence in the case and keeps on presiding in the enquiry, the whole procedure is illegal: *State of U. P. v. Mohammad Nooh*, A. I. R. 1958 S. C. 86.

The mere assumption that the Commissioner is annoyed with a petitioner because he went to the High Court by means of a writ application is no grounds for holding that the order of the Commissioner suffers from the vice of malafide: *Kishan Chand v. Commr. of Police*, A.L.R. 1961 S.C. 710.

Where the allegations that the Chief Minister was motivated by bias and personal ill will against the appellants was un rebutted a writ was granted: *C. S. Roujee v. State of Andhra Pradesh*, A. I. R. 1964 S. C. 962.

Allegations of malafide and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times; it is also somewhat unfortunate that allegations of this nature which have no foundation in fact are made in several of the cases which come the Courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of it at least might stick. Consequently it has become the duty of the Court to scrutinise these allegations with care so as to avoid being in any manner influenced by them in cases where they have no foundation in fact : *C. S. Rosejee v. State of Andhra Pradesh*, A. I. R. 1964 S. C. 962.

1310. Source of information should be given

It is true that in a case where malafide is alleged it would be difficult for a petitioner to have personal knowledge, but then where such knowledge is wanting he must disclose his source of information so that the other side gets a fair chance to verify it and make an affective answer: *Barium Chemical Ltd. v. Company Law Board* A. I. R. 1967 S. C. 295.

1311. Alegations of malafide made, affidavit to rebut should be filed.

When allegations are made against the Chief Minister, he owes a duty to the Court to file an affidavit stating what the correct position is so far as he remembered it. If the Chief Minister does not remember the circumstances, it is very easy for him to say so. If he remembered the circumstances he should refute the allegations with equal ease: *R. P. Kapur v. Parlap Singh Kairon*, A.I.R. 1961 S.C. 1125.

1312. Bias, what it signifies.

"The principles governing" the the doctrine of bias" vis-a-vis Judicial Tribunals are well settled and they are (i) no man shall be a judge in his own cause (ii) justice should not only be done but manifestly and undoubtedly seem to be done. The two maxims yield the result that if a member of a judicial body is "subject to a bias (whether financial or other in favour of a party or an agent, of any party to a dispute, or is in such a position that bias must be assumed to exist he ought not to take part in the decision or sit on the Tribunal"; and that "any direct pecuniary interest, however small in the subject matter of inquiry will disqualify a judge, and any interest though not pecuniary will have the same effect if it be sufficiently substantial to create a reasonable suspicion of bias". The said principles are equally applicable to authorities though they are not Courts of justice, or judicial Tribunals, who have to act judicially in deciding that rights of others i. e. authorities who are empowered to discharge quasi-judicial functions: *Nageshura Rao v. State*, A.I.R. 1959 S.C. 1376.

NATURAL JUSTICE.

1313. Fair opportunity to be heard

It is now well settled that while considering the question of breach of the principles of natural justice the Court should not proceed as if there are any inflexible rules of natural justice of universal application. The Court has to consider in each case whether in the light of the facts and circumstances of that case, the nature of the issues involved in the inquiry, the nature of the order passed and the interests

affected thereby a fair and reasonable opportunity of being heard was furnished to the person affected. In *Local Government Board v. Arlidge*, 1915 A. C. 120 Lord Parmoor observed as follows :—

“Where, however, the question of procedure is raised in a hearing before some tribunal other than a Court of law, there is no obligation to adopt the regular forms of judicial procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice. In determining whether the principles of substantial justice have been complied with in matters of procedure regard must necessarily be had to the nature of the issue to be determined and the constitution of the Tribunal”.

A similar approach to the question is also to be found in *New Prakash Transport Co. Ltd.*, 1957 S.C.R. 95 where Supreme Court laid down the following guiding principle.

“Rules of natural justice with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any pre-conceived notion of what they may be but in the light of the provisions of the relevant Act”.

These decisions were approved in *B. M. & D. Mfg. Co. v. L. K. Bose*: A. I. R. 1967 S. C. 361.

1314 Right to cross examine is not part of natural justice.

The rules of Natural justice do not require that a person must be given an opportunity to cross examine the witness. In *Meenglas Tea Estate v. Their workmen* (1964) 2 S.C.R. 165 the Court decided that when evidence is given *viva voce* against a person he must have the opportunity to hear it and to put the witness questions in cross-examination. Further more, in *Meenglas Tea Estate Case*, (1964) 2 S. C. R. 165: A.I.R. 1963 S.C. 1719 and the Supreme Court approved *Nagendra Nath Bora v. Commr. of Hills Division*, A.I.R. 1958 S. C. 398

But this will depend upon the facts of each case and the requirements prescribed by a statute: *Ghulam Mohd' Case*, A.I.R. 1967 S. C. 81.

1315. Broad Requirements of natural justice.

The rules of natural justice have to be inferred from the nature of the tribunal, the scope of its enquiry and the statutory rules of procedure laid down by the law for carrying out the objectives of the statute. The mere circumstance that the procedure prescribed by the statute does not require that evidence should be recorded in the manner laid down, for ordinary courts of law does not necessarily mean that there is a violation of the principles of natural justice: See *New Prakash Transport (Supra)* In *Union of India v. T. R. Varma*, 1958 S.C.R. 499 it was said.

“Stated it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that

party, and that no materials should be relied on against him without his being given an opportunity of explaining them".

Each case should be decided on its own facts: *Srila Sri Subramania v. State of Madras*, A.I.R. 1965 S.C. 1578; *Fedco v. S.N. Bilgrame*, A.I.R. 1960 S.C. 415.

1316. Person choosing not to attend the court cannot complain.

If a party chooses to be absent in spite of notice and evidence is recorded ex-parte and the party who chooses to be absent cannot be heard to say that he had no opportunity of being heard or of cross-examining the persons whose statements were recorded by the court. After all, what natural justice requires is that a party should have the opportunity of adducing all relevant evidence and that he should have an opportunity of the evidence of his opponent being taken in his presence. Where a landlord chooses not to attend the court he cannot complain later on: *Roshan Lal v. Ishwar Dass*, A.I.R. 1962 S.C. 646.

1317. Personal bias, violates natural justice.

The elementary rule of natural justice is that a person trying a cause, though in a quasi-judicial proceeding, should not suffer from a personal bias: *A. S. P. R. T. Corpn. v. Satyanarayana Transports*, A.I.R. 1965 S.C. 1303.

1318. Impartial treatment to be given.

It is an elementary rule of natural justice that a person who tries a cause should be able to deal with the matter before him objectively, and impartially. Anything which tends or may be regarded as tending to cause a case to be decided otherwise than on evidence must be held to be biased. If a person has a pecuniary interest in the case brought before him, that is an obvious case of bias which disqualifies him to try the cause. If a person is hostile to a party whose cause he is called upon to try that again would introduce the infirmity of bias and would disqualify him from trying the cause: *A.P.S. R. T. Corpn. v. Satyanarayana*, A.I.R. 1965 S.C. 1303.

1319. Judicial or quasi-judicial bodies should not violate principles of natural justice.

The authorities or bodies which are given jurisdiction by statutory provisions to deal with the rights of citizens may be required by the relevant statute to act judicially in dealing with matters entrusted to them. An obligation to act judicially may, in some cases be inferred from the scheme of the relevant statute and its material provision. In such a case, it is easy to hold that the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its power; but is not necessary that the obligation to follow the principles of natural justice must be expressly imposed on such an authority or body. If it appears that the authority or body has been given power to determine questions affecting the rights of citizens, the very nature of the power would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural justice. In *Associated Cement Companies v. P. N. Sharma*, A.I.R. 1965 S.C. 1595 the matter was elaborately examined, and it was held adopting the view expressed by the *House of Lords in Ridge v. Baldwin*, 1964 A.C. 40 that the extent of the area where the principles of natural justice have to be followed and judicial approach has to be adopted, must depend primarily on the nature

of the jurisdiction and the power conferred on any authority or body by statutory provisions to deal with the questions affecting the right of citizens: *Lala Sri Bagwan v. Ram Chand and another*, A.I.R. 1965 S.C. 1767.

1320. Opportunity to show cause

In an enquiry where disciplinary action is proposed reasonable opportunity should be given to show cause and before reaching its conclusion the enquiry officer should give opportunity to lead evidence against the case set up and a reasonable chance to test the evidence led against him. Such an enquiry is prescribed by the requirements of natural justice: *D. R. Boord v. Jaffor Imcanan*, A.I.R. 1965 S.C. 282.

1321. Rules of Natural justice vary from case to case.

The rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravened should be decided not under any pre-conceived notions but in the light of the statutory rules and provisions. In dealing with a statute which permits a Commission of Inquiry to be set up for fact finding purposes, the report of the Commission has no force *proprio vigore* and this aspect of the matter is important in deciding the requirement of rules of natural justice. The Commission of Inquiry Act gives a right to be heard but only a restricted right of cross examination. The latter right is confined only to the witnesses called to depose against the person demanding the right. So the Act does not contemplate a right of hearing to include a right to cross-examine. No grievance can be made that the Act does not contemplate right to cross-examine because rules of natural justice does not require that a person should have right to cross examine all the persons who had sworn affidavits supporting the allegations made against him: *State of J & K v. Bakshi Ghulam Mohammad*, A.I.R. 1967 S.C. 81.

1322. Case of the prosecution should be stated, evidence not brought to the notice of other party should not be acted upon.

If an administrative order involves evil consequence, it is the requirement of the rules of natural justice that the evidence in support of the case should be disclosed to the other party: *State of Orissa v. Dr. (Miss) Binanani Devi*, A. I. R. 1967 S. C. 1260.

The tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it: *State v. Shivabassappa* A.I.R. 1963 S. C. 375.

1323. Fair opportunity, what is.

What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts: *State of Mysore v. Shivabassappa*, A.I.R. 1963 S.C. 375.

1324 Disciplinary action, Natural justice to be observed.

In cases where a statutory body or authority is empowered to terminate the employment of its employees, the said authority or body cannot be heard to say that it will exercise its powers without due regard to the principles of natural justice. The nature or the character of the proceedings which such a statutory authority or body must adopt in exercising its disciplinary powers for the purpose of terminating the employment of its employees, has been recently considered by the Supreme Court in several cases, vide the *Associated Cement Companies Ltd., v. P. N. Sharma*, A.I.R. 1965 S.C. 1295; *Bhagwan v. Ram Chand*, A.I.R. 1963 S.C. 1967; *D. L. Board Calcutta v. Joffar Imam*, A.I.R. 1966 S.C. 582.

The order will be vitiated as being contrary to the principles of natural justice, where reasonable opportunity of being heard which is a *sine qua non* of a fair hearing is not given : *Brij Lal Manilal and Co. v. Union of India and another*, A.I.R. 1964 S.C. 1643.

1325. Refusal to record evidence does not violate natural justice.

In *New Parkash Transport Co. Ltd.*, 1957 S. C.R. 98 on a consideration of the provisions of the Act and the Rules the court held that though the appellate authority had to function in a quasi judicial capacity but not as a Court of law, it was not required to record oral or documentary evidence and that the only requirement was that in considering the rival claims for the stage carriage permits the authority had to deal with such claims in a fair and just manner. Similarly in *Western India Match Co. v. Industrial Tribunal, Madras*, 1962-1 Lab-L.J. 629 the Supreme Court once again stated that Industrial Tribunal was not bound by the strict rules of procedure of the Evidence Act and that if having regard to the fact that the agreement alleged was denied by respondents, it came to the conclusion that, that proof of the agreement would not really matter, that clearly would be a decision within its jurisdiction and it would be unreasonable to invoke the prerogative jurisdiction of the High Court under Article 226 to overrule or reverse such a conclusion.

It is clear that a refusal to record oral evidence does not necessarily mean contravention of the rules of natural justice: *B. D. and D. Mfg. Co. v. L. K. Bose*, A.I.R. 1967 S. C. 361.

In *Nakkuda Ali's* case, 1951 A.C. 66, the Controller was *prima facie* dealing with a case in which the rights of a person were to be determined but the judicial Committee was of the view that the statute in the particular case did not require the Controller to act judicially. There is a clear distinction between a case in which an authority is invested with power to determine the rights of a person, and cases in which the authority is invested with power to act in a certain matter, and the exercise of that affects the rights of a person. In the former, the duty to act judicially may readily be inferred. But whether a public authority invested with powers to pass a specified order is required to act judicially must depend upon the scheme of the statute which invests him with that power. The nature of the authority conferred, the procedure prescribed and the nature of the power exercised will determine the question whether the public authority is required to act judicially; it is not however predicted that before a writ of certiorari or prohibition may issue the duty to act judicially must be expressly or independently imposed upon the authority called upon to determine the rights of a citizen. It was observed:

"If the mere requirement that the Controller must have reasonable grounds of belief is insufficient to oblige him to act judicially, there is nothing else in the context or conditions of his jurisdiction that suggests that he must regulate his action by analogy of judicial rules."

This case was approved by the Supreme Court in the case of *Sadhu Singh v. Delhi Administration*, A.I.R. 1966 S. C. 96, when dealing writs Defence of India Act and Rules where it was held that the scheme of the Regulation negated according to Judicial Committee, a judicial approach : *Sadhu Singh v. Delhi Administration (supra)*.

1326. Records should be before the Courts.

Non production of the records completely defeats the purpose for which writs of certiorari are issued: *Moti Ram v. The Commissioner of Income Tax*, A.I.R. 1959 S. C. 63.

WRIT OF PROHIBITION

1327. Writ of Prohibition-Scope of.

A writ of prohibition is an order directed to an inferior Tribunal forbidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise: *East India Commr. Co. v. Collector of Customs*, 1963 (5) S.C.R. 328.

It is well settled that where proceedings in an inferior court or tribunal are partly within and partly without its jurisdiction, prohibition will lie against doing what is in excess of jurisdiction. Where the Collector of Customs imposed invalid conditions for release of gold on payment of the fine in lieu of confiscation, the High Court is competent to issue a writ of prohibition prohibiting the Customs Authorities from enforcing the invalid conditions: *Sewpujanrai Ltd. v. Collector of Customs*, (1959) S. C. R. 821.

1328. Question of jurisdiction not involved, writ of Prohibition may not be issued.

In petitions for writ of prohibition under Art 226 of the Constitution, a contention cannot be urged if it does not raise any question of jurisdiction. Where the argument was that the course adopted by the Income Tax Officer in making orders of fresh assessment is irregular and illogical and should be corrected, it can by no stretch of imagination be said that it raises any question of jurisdiction under Article 226: *Y. Naravana Chetty v. The Income Tax Officer*, A.I.R. 1959 S. C. 213.

WRIT OF HABEAS CORPUS

1329. Purpose of.

The incalculable value of Habeas Corpus is that it enables the immediate determination of the right of the parties, to their freedom. When there is no question of fact to be examined or determined no affidavit is needed. As soon as there emerges a fact into which the Court feels it should enquire, the necessity for an affidavit arises. Ordinarily an affidavit may not be necessary in making the return if the detention is under orders of the detaining authority in exercise of its plenary discretion affidavit: *S. Ranjit Singh v. The State of Pepsu*, A.I.R. 1964 S. C. 843

1330 Person under detention if not produced in court when so ordered—Contempt proceedings may be launched.

A direction given by the High Court in a proceeding for a writ of habeas corpus for the production of the body of a person has to be carried out and if disobeyed the contempt is punishable by attachment and imprisonment. A valid excuse will, however, be that it is impossible to obey the order : *Mohd Ibram Hussain v. The State of Uttar Pradesh and other*, A.I.R 1964 S.C. 1625.

A convict was sentenced to imprisonment and was released from custody on grounds of his ill health but was subsequently re-arrested and detained in Jail. In an application under Article 226 for a Writ of Habeas Corpus, the State did not file any return showing the provisions under which the convict was released or re-arrested. It was held that as it had not been shown that there was lawful authority under which the convict was re-arrested his detention could not be supported and was illegal: *State of Bihar v. Kameshwar Prasad*, A.I.R 1965 S. C. 575.

1331. Writ will issue if a person is detained without authority of law.

The observations of Lord Atkin in *Eshugbayi Eleko v. Officer Administering Government of Nigeria*, 1931 AC 662 at p. 670; A. I. R. 1931 PC 248 at p. 252 were approved. These observations are as follows : —

"In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of justice. And it is the tradition of British justice that Judges should not shrink from deciding such issues in the face of the executive".

It is the same jurisprudence which has been adopted in this country on the basis of which the Courts of this country exercise jurisdiction. Where it has not been shown that there was any lawful authority under which the petitioner was rearrested and in the absence of any lawful authority the petitioner's detention was declared illegal interference under Article 226 is rightly applicable under the circumstances : *State of Bihar v. Kameshwar Prasad*, A. I. R. 1965 S. C. 575-577.

1332. Detention order is an executive order review of that order is also executive.

Making of an order of detention proceeds upon the subjective satisfaction of the prescribed authority in the light of circumstances placed before him, or coming to his knowledge, that it is necessary to detain the person concerned with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order etc. If that order is purely executive, and not open to review by the Court. A review of those very circumstances on which the order was made in the light of the circumstances since the date of that order cannot but be regarded as an executive order. Satisfaction of the authority under Rule 30 (1) of the Defence of India Rules proceeding upon facts and circumstances which justifies him in making an order of detention and the satisfaction upon review of those very facts and circumstances in the light of circumstances, which came into existence since the order of detention, are the result of an executive determination and are not subject to judicial review: *Sadhu Singh v. Delhi Administration*, A. I. R. 1966 S. C. 95.

WRIT OF QUO WARRANTO

1333. Writ of quo warranto.

Broadly stated, the quo warranto proceedings affords judicial enquiry in which any person holding an independent substantive public office, or franchise or liberty is called upon to show by which right he holds the said office, franchise or liberty, if the enquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto onsts him from that office. In other words the procedure of quo warranto confers jurisdiction and authority on the Judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted, subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in such cases persons not entitled to public office may be allowed to occupy : *unveisy of Mysore v. Gobinde Rao* A.I.R. 1965 S. C. 492.

WRIT OF MANDAMUS

1334. Writ of mandamus can be issued when there is breach of some statutory duty.

Even on the assumption that the order of the Deputy Custodian terminating the magement of the appeellant is illegal, the appellant is not entitled to move the High Court for grant of a writ in the nature of mandamus under Article 226 of the Constitution. The reason is that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that Officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdictions. *Lekh Raj v. Dy custodian*, A. I. R. 1966 S. C. 334. A contractual obligation falling upon a public servant out of a contract cannot be enforced by the machinery of a writ under Article 226 of the Constitution. In *commer of Income Tax, Bombay Presidency and Aden v. Bombay Trust Corporation Ltd*, 63 Ind App. 408 : the Judicial Committee at P. 427 of the report observed.

"Before Mandamus can issue to a public servant it must therefore be shown that a duty towards the applicant has been imposed upon the public servant by statute so that he can be charged thereon and independently of any duty which as servant he may owe to the Crown, his principal".

This view was approved in *Lekh Raj v. Dy. Custodian Bombay*, A. I. R. 1966 S.C. 334 at page 336. *Shivendra Bahadur v. Nalanda College*, A. I. R. 1962, S.C. 1210-1211.

1335. Liability arising out of breach of Contract.

The High Court normally does not entertain a petition under Art. 226 of the Constitution to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimant *Burmah Construction Co. v. State of orissa*, A.I.R. 1962.

1336. Tax illegally recovered Mandamns can be issued for refund.

The High Courts have power to pass any appropriate. order in the

exercise of the powers conferred under Art 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund can always be made in a suit against the authority which had illegally collected the money as a tax. Normally a petition solely praying for the refund of the money against the State by a writ of mandamus is not to be entertained. The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim: *Sughmal v. State of Madhya Pradesh*, A. I. R. 1963 S.C. 1740. In this case the decision given in *Commr v. Gordhandas*, 1952 S.C.R. 135 was distinguished.

The jurisdiction conferred by Article 226 is in very wide terms. This article empowers the High Court to give relief by way of enforcement of fundamental rights and other rights by issuing directions, orders or writs including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warrant* and *certiorari*. In *Sales Tax Officer v. Kanhaiya Lal*, 1959 S.C.R. 1350 the appellants disputed the correctness of the High Court's order made in an application under Article 226 of the Constitution directing refund of taxes that had been paid under the U.P. Sales Tax Act by the respondent in forward transactions in silver bullion. After the levy of Sales tax on such transactions was held to be ultra vires by the High Court of Allahabad, the respondent asked for refund of the tax paid and when that was refused he applied to the High Court under Article 226 of the Constitution for a writ of *certiorari* for quashing the assessment orders and a writ of *mandamus* requiring the appellants to refund the amount illegally collected. The order made in this case by the High Court for refund was affirmed by this Court in appeal but the power to issue such a writ was not raised in the case: *State of Madhya Pradesh v. Bhailal Bhai*, A. I. R. 1964 S.C. 1006 at page 1010.

1337. Same Instances.

Government has no power to cancel or supersede reference made under S. 10 (1) of the Industrial Disputes Act and a mandamus would be appropriate: *State of Madras v. U. P. and Others* (1959) S. C. R. 1191.

But a writ will not lie for the enforcement of rules having no legal value: *The State of Assam v. Ajit Kumar, Sarma* A.I.R. 1963. S.C.

Similarly High Court cannot issue a writ for the inclusion of certain persons in the list when the decision is based on assumption.

A writ of mandamus will not lie when auction is not confirmed or is confirmed illegally: *K. N. Guruswamy v. The State of Mysore* 1955 S.C.R. 305.

In mandamus petitions the High Court cannot constitute itself into a court of appeal. It is not the function of Courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law. *The Vice Chancellor, Utkal University and Other v. S. K. Ghosh and Others*, 1954, S. C. R. 383.

The grant of dearness allowance does not confer a right and hence mandamus does not lie. *The State of Madhya Pradesh v. G. C. Mandawar*, 1955 (1) S. C. R. 599.

POWER OF SUPERINTENDENCE

1338. Scope of Article 227.

Article 227 corresponds to S. 107 of the Government of India Act, 1915. The scope of that section has been discussed in many decisions of Indian High Courts. However wide it may be than the provisions of S. 115 of the Code of Civil Procedure, it is well settled that exercise of its power under that section assume appellate powers to correct every mistake of law. A mere erroneous decision where the error is not being apparent on the face of the record, cannot be corrected by the High Court in revision under Section 115 of the Code of Civil Procedure or under Art. 227: *Satyannarayan Laxminarayan Hegde and others v. Mallikarjun Bhavanappa Tribunal*, A.I.R. 1960 S.C. 137.

Where the High Court was moved for the exercise of its power of superintendence under Art 227, it is open to the Supreme Court in appeal to exercise the same power as High Court could exercise: *Baldeo Singh and others v. The State of Bihar and others*, AIR 1957 S. C. 612.

The High Court exercising its jurisdiction under Article 227 of the Constitution is not competent to set aside the finding of fact recorded by the Industrial Tribunal: *Dharangadhra Chemical Works Ltd. v. State of Saurashtra* A.I.R. 1957 S. C. 264.

Though the High Court may not have jurisdiction to interfere under S.C. 435/439, Code of Criminal Procedure it can certainly interfere with the order of the Magistrate under Art 227 of the Constitution. Under Art 227 of the Constitution, the High Court would have jurisdiction to interfere with the order of the Magistrate if it came to the conclusion that circumstances exist for interference *Cantonment Board v. Pyre Lal* A.I.R. 1935 S.C. 108.

The question whether the relationship between the parties is one as between employer and employee or between master and servant is a pure question of fact and the Court cannot go into it under Article 27. *Dharangadhra Chemical Works Ltd. v. State of Saurashtra and others* A.I.R. 1957 S. C. 264 See also *Carl Still G. M. R.H. v. State of Bihar*, A.I.R. 1961 S. C. 1615. *D. C. Works Ltd. v. State of Saurashtra and others*, A.I.R. 1957 S. C. 264.

1339. Discretion under Article 227 not properly exercised, Supreme High Court may interfere.

See *Surendra Nath v. Stephen Ltd*, A.I.R. 1966 S. C. 1361

1340. Unlawful dispossession High Court can interfere under Article 227.

Where a person was unlawfully dispossessed of the land and the Revenue Authorities in refusing to give him assistance illegally refused to exercise jurisdiction vested in them by law, the question being one of jurisdiction, the High Court was, competent to exercise the power vested in it by Article 227: *Dahya Lal and another v. Rasool Mahomed Abdul Rahim and another*, A.I.R. S. C. 1320.

1341. Tribunal, Meaning of.

The word "tribunal" find place in Article 227 of the Constitution and has the same meaning as in Article 136: *A. C. Commission v. P. N. Sharma*, A. I. R. 1965 S. C. 1595, *Virendra Kumar v. State*, A. I. R. 1956 S. C. 153.

1342. Tribunal cannot ignore the judgment of High Court.

Under Article 227 the High Courts have jurisdiction over all courts and tribunals throughout the territories in relation to which it exercise jurisdiction and it would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by the court : *M/s East India Commercial Co., Ltd. Calcutta and another*, A.I.R. 1963 S. C. 1893

1343. Article 227 does not confer appellate jurisdiction.

The jurisdiction conferred by Article 227 is not by any means appellate in its nature for correcting errors in the decisions of Subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority: *Nagendra Nath Bora v. Commissioner Hill Division, Assam*, 1958 S. C. R. 1240, A. I. R. 1958 S.C. 398). *Nibaram Choudra Beg v. Mahendra Nath Singhu* A. I. R. 1962 S. C. 1865.

WRITS UNDER ARTICLE 32

1344. Scope of article 32.

The scope of the jurisdiction of the Supreme Court in dealing with writ petitions under Article 32 was examined by a Special Bench in *Smt. Ujja B. v. State of Uttar Pradesh*, 1963-1-S.C.R. 778. The decision would show that in three classes of cases a question of the enforcement of the fundamental rights may arise : and if it does arise, an application under article 32 will lie; these cases are (1) where action is taken under a statute which is ultra vires of the Constitution (2) where the statute is intra vires but the action taken is without jurisdiction ; and (3) where the action taken is procedurally ultra vires as where a quasi judicial authority under an obligation to act judicially passes an order in violation of the principles of natural justice : *Narish v. State of Maharashtra*, A.I.R. 1967 S. C. 1.

1345 Relief granted under article 32 when there was dispute regarding the validity of a regulation.

Though the court granted relief on the interpretation of the rules, the Court observed that it should not be taken as a precedent : *Gurdev Singh v. State of Punjab*, A.I.R. 1964 S. C. 1585.

1346. Article—32 "Any Court"—Meaning of

Article 32 (1) provides that without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) of Article 32, Parliament may, by law, empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). The scheme of article 32 clearly indicates that the right to move the Supreme Court, which itself is a guaranteed fundamental right, cannot be claimed in respect of Court. Article 32 merely provides for the confirmation of the Supreme Court's power under Article 32 (2) on the courts specified in clause (3). The right guaranteed by Article 32 (1) cannot be claimed in respect of the said other courts. On a plain construction of the relevant clauses of Article 32, it is wrong to say that courts under Article 32 (3) must be regarded as having the same status as the Supreme Court and as such the right to move them must also be held to constitute a fundamental right of the citizen in respect of such courts. Besides, it would be irrational to suggest that whereas the Constitution did not confer on the citizens a guaranteed fundamental right to move the High Court under Article 226, it thought of conferring such a guaranteed fundamental right in regard to courts on which the Supreme Court's powers

under Article 32 (2) would be conferred by Article 32, (3). The words "any Court" must be given their plain grammatical meaning and must be construed to mean "any court of competent jurisdiction": *Makhan Singh v. State of Punjab*, A.I.R. 1964 S.C. 381.

In plain language the words "any court" cannot mean only the Supreme Court. They would necessarily cover all courts of competent jurisdiction. If the intention of the Constitution makers was to confine the operation of Article 359 (1) to the right to move only the Supreme Court, nothing could have been easier than to say so expressly instead of using the wider words "the right to move any court": *Makhan Singh v. State of Punjab* A. I. R. 1964 S. C. 381.

1347. Articles 226 and 32 Compared.

It is well settled that the powers of the Courts to issue writs of certiorari under 32 (2) as well as the powers of the High Courts to issue similar writs under Article 22 are very wide. In fact the powers of the High Courts under Article 226 are in the sense, wider than those of the Supreme Court, because the exercise of the powers of the Supreme Court to issue writs of certiorari are limited to the purposes set out in Article 32 (1). The nature and the extent of the writ jurisdiction conferred on the High Court by Article 226 was considered by this Court as early as 1955 in *T. C. Basappa v. T. Nagappa*: 1955 1 S.C.R. 250 at pp 256-8. It was further considered in *Hari Vishnu Kamath's* see para 1281.

1348. Order passed by High Court cannot be challenged under Article 32.

Having regard to the fact that an order is passed by a superior Court or record in the exercise of its inherent powers the question about the existence of the said jurisdiction as well as the validity or propriety of the order cannot be raised in writ proceedings taken out by the petitioners for the issue of a writ of certiorari under Article 32: *Naresh v. State of Maharashtra*. A.I.R. 1967 S.C. 1.

1349. Procedure ultravires, Article 32 may be invoked.

In the case of *Smt. Ujjam Bai*, 1963 1 S.C.R. 778 it was not disputed before the Court that where the action taken against a citizen is procedurally *ultra vires* the aggrieved party can move the Court under Article 32, see also *Sinha Govinji v. Deputy Chief Controller of Imports and Exports*, 1101 1 S.C.R. 540. The jurisdiction of the Supreme Court under Article 32 can be invoked if the impugned order has been passed by adopting a procedure which is *ultra vires*: *Naresh v. State of Maharashtra* A.I.R. 1967 S.C. 1.

1350. Infringement by private parties.

The violation of the rights under chapter III by private parties is not within the purview of Article 32 and a person whose right to property is infringed by a private individual must, therefore, seek his remedy under the ordinary law and not by way of an application under Article 32. See *P. D. Shamdasani v. Central Bank of India Ltd.*; 1952 S.C.R. 391. But where private parties are conferred some rights of a statute, a writ will lie.: *Kochuni v. State* A.I.R. 1959 S.C. 725.

1351. Contractual rights not covered

See *Anarida Behra v. State of Orissa*, 1955-2 S.C.R. 919; *Chhotabhai Patel and Co. v. State of Madhya Pradesh*, 1953 S.C.R. 476.

That was a case of an appeal coming from a High Court and there was no difficulty in remanding the case for a finding on an issue, but the fact to note is that the Court did make a declaration that Section 7 of the Act was void. But in the case of *Umegsingh v. State of Bombay*, 1955 (2) S.C.R. 164 which came up before the Court on an application under Article 32, the petitioner had been relegated to filing a regular suit in a proper court having jurisdiction in the matter. But now it appears to be well established that the Court's powers under Article 32 are wide enough to make even a declaratory order where that is the proper relief to be given to the aggrieved party. In the *Kochummi's case*, A.I.R. 1959 S.C. 717, where the impugned Act had taken away or abridged the petitioners right under Article 19 (1)(f) by its own terms and without anything more being done and as such infraction could not justified.

1352. Adequate remedy and article 32

The argument in support of the objection was developed and elaborated by the petitioner in several ways; in the first place, he contended that petition of Mandamus, was not maintainable because the petitioners had an adequate remedy in that they could agitate the question sought to be raised in the petitions and get relief in the pauper suit filed by one of the respondents. The Court held that this argument overlooks the fact that as petitions are under Article 32 of the Constitution which is itself a guaranteed right, alternative remedy would not bar it. In *Rashid Ahmed v. Municipal Board, Kairana*, 1950 S.C.R. 566; (A.I.R. 1950 SC 163), the Court negatived submissions made on behalf of State of Uttar Pradesh to the effect that, as the petitioner had an adequate legal remedy by way of appeal, the Court should not grant any writ in the nature of the prerogative writ of Mandamus or Certiorari and observed:

"There can be no question that the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, but the powers given to the Courts under Art. 32 are much wider and are not confined to issuing prerogative writs only".

Further, even if the existence of other adequate legal remedy may be taken into consideration by the High Court in deciding whether it should issue any of the prerogative writs on an application under Art. 226 of the Constitution, the Supreme Court cannot, on a similar ground, decline to entertain a petition under Art. 32, for the right to move the Court by appropriate proceedings for the enforcement of the rights conferred by Part III of the Constitution is itself a guaranteed right. It has been held by the Supreme Court in *Romesh Thappar v. State of Madras*, 1950 S.C.R. 594 that under the Constitution the Supreme Court is constituted as the protector and guarantor of fundamental rights and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking the protection of the Court against infringement of such rights, although such applications are made to the Court in the first instance without resort to a High Court having concurrent jurisdiction in the matter. The mere existence of an adequate alternative legal remedy cannot *per se* be a good and sufficient ground for throwing out a petition under Art. 32, if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is *prima facie* established on the petition: *K. K. Kochummi v. State of Madras*, A.I.R. 1959 S. C. 725.

High Courts in petitions under Art 226 the Supreme Court held that an attempt to levy tax under a statute which was ultra vires infringed the fundamental rights of the citizens and recourse to the High Court for protection of the fundamental rights was not prohibited because of the provisions contained in Art 265. In the case of *Tata Iron and Steel Co v S P Sarkar*, A I R. 1961 SC 69 the vires of the central Sales Tax Act 1956 was not challenged but in *Kailash Nath v State of U P*, A I R 1957 SC 790, a petition challenging the levy of a tax was entertained by the court even though the Act under the authority of which the tax was sought to be recovered was not challenged as ultra vires. The court did not go into the question whether the principle of *Kailash Nath's case* A I R 1957 SC 790 is inconsistent with the view expressed by the court in *Ramjilal's case* but held that the threat to recover sales-tax on behalf of the central Government, recovery of which was impugned, the court held prima facie infringes the fundamental right of the company to hold its property and the company is entitled to approach the court under Art 32 of the Constitution. *Tata Iron and Steel Co v S R. Sarkar*, A.I.R. 1961 SC. 69

1357 Writ petition dismissed in High Court Supreme Court may interfere under Article 32 if fundamental right involved.

The High Court came to the conclusion that refusal of the renewal of permit to the petitioners was illegal but it refused to pass an order in favour of the petitioners on the ground that the relief granted would be short lived. In effect, the judgment of the High Court was in favour of the petitioners and not against them though in form the writ petition was dismissed. In the circumstances as the petitioners fundamental right to carry on business was involved the Supreme Court was of opinion that it will not be proper to refuse relief to petitioners on the ground that their writ petition was dismissed by the High Court and they have not yet been able to obtain a certificate permitting them to appeal to the Supreme Court. *Shrinivasa v State of Mysore*, A I R 1960, SC 330

1358 Article 136 cannot be circumvented by resorting to Article 32

The Supreme Court had rejected the application for special leave to appeal under Art 136; and that order cannot be circumvented by filing an application for a writ under Article 32. Relief under Art. 32, for enforcement of a right conferred by Ch III can be granted only on proof of that right and infringement thereof, and if by the adjudication by a Court under Article 32 of the Constitution for enforcement of that right, notwithstanding the adjudication of the civil court, cannot be entertained. *Salubada Sayed Muhammed Amirable Abbasi & others, v. State of Madhya Bharat*, A I R 1960 SC 768

1361. Misconstruction of a statute cannot be challenged under Article 32

An order of assessment made by an authority under a taxing statute which is *intra vires* and in the undoubted exercise of its jurisdiction cannot be challenged on the sole ground that it is passed on a misconstruction of a provision of the Act or of a notification issued there under, nor can the validity of such an order be questioned in a petition under Article 32 of the Constitution. The proper remedy for correcting an error in such an order is to proceed by way of appeal, or if the error is an error apparent on the face of the record, then by an application under Article 226 of the Constitution. Article 32 of the Constitution does not give the Supreme Court an appellate jurisdiction such as is given by Arts. 132 to 136. Article 32 guarantees the right to the constitutional remedy and relates only to the enforcement of the rights conferred by Part III of the Constitution. Unless a question of the enforcement of a fundamental right arises, Article 32 does not apply. There can be no question of the fundamental right if the order challenged is a valid and legal order, in spite of the allegation that it is erroneous, A.I.R. 1962 S.C. 1621.

1362. Writ can be filed when the fundamental right is violated or when there is a threat of violation

An application under Art. 32 can be maintained against the State when it has taken or threatens to take any action under the impugned law which action if permitted to be taken, will infringe the fundamental rights of the citizens. Where the enactments abolishing estates contemplated some action to be taken by the State, after the enactments came into force, by way of issuing notifications, so as to vest the estates in the State and thereby to deprive the proprietors of their fundamental right to hold and enjoy their estates, it was held to be violative of Fundamental rights. The argument that under these enactments some overt act had to be done by the State before the proprietors were actually deprived of their right, title and interest in their estates was held to be unsustainable. It was held that cases arising under these enactments the proprietors could invoke the jurisdiction of the Supreme Court under Art. 32 when the State did or threatened to do the overt act.

An enactment may immediately on its coming into force take away or abridge the fundamental rights of a person by its very terms and without any further overt act being done. In such a case the infringement of the fundamental right is complete *eo instanti* the passing of the enactment and there can be no reason why the person so prejudicially affected by the law should not be entitled, immediately to avail himself of the constitutional remedy under Art. 32. The coercive machinery of the impugned Act was held to be a sufficient infringement of the fundamental right which gave a person a right to seek relief under Articles 226 or 32 of the Constitution. It will be noticed that the Act impugned in that case had by its terms made it incumbent on all dealers to submit returns etc. and thereby imposed restrictions on their fundamental right to carry on their business under Art. 19 (1) (g): *Kochimin's Case*, A. I. R. 1959 S. C. 725,

That a person whose fundamental right has been infringed by the mere operation of an enactment, is not entitled to invoke the jurisdiction of the Supreme Court under Article 32 for the enforcement of his right, will be to deny him the benefit of a salutary constitutional remedy which is itself his fundamental right. In

the *State of Bombay v. United Motors (India) Ltd.*, 1953 S.C.R. 1069 the petitioner applied to the High Court on 3rd of November, 1952, under Art. 226 of the Constitution challenging the validity of the Bombay Sales Tax Act, 1962 which came into force on 1st November, 1952. No notice had been given and no demand had been made on the petitioners for the payment of any tax under the impugned Act. In the petition one of the grounds of attack was that the Act required the dealers on pain of penalty to apply for registration in some cases and to obtain a license in some other cases as a condition for the carrying on of their business, which requirement without anything more, was said to have infringed the fundamental rights of the petitioners under Art 19 (1) (g) of the Constitution. It was held that no objection could be taken to the maintainability of the application for the enforcement of the Fundamental Rights. In *Himmattal H. Mehta v. State of Madhya Pradesh*, 1954 S.C.R. 1122 after cotton was declared, on 11th of April, 1949; as liable to Sales Tax under the Central Province and Bearar Sales Tax Act 1947, the appellant commenced paying the tax in respect of the purchases made by him and continued to pay it till 21st of December 1950. Having been advised that the transactions done by him in Madhya Pradesh were not "sales" within that State and that consequently he could not be made liable to pay sales tax in that State, the appellant declined to pay the tax in respect of the purchases made during the quarter ending 31st of March, 1951. Apprehending that he might be subjected to payment of tax without the authority of law, the appellant presented an application to the High Court of judicature at Nagpur under Art. 226 praying for an appropriate writ or writs for securing to him protection from the impugned Act and its enforcement by the State. The High Court declined to issue a writ and dismissed the petition on the ground that a Mandamus could be issued only to competent authority to do or to abstain from doing some act and that it was seldom anticipatory and was certainly never issued where the action of the authority was dependent on some action of the appellant and that in that case the appellant had not even made his return and no demand for the tax could be made from him. Being aggrieved by that decision of the High Court, the petitioner in that case came up to the Supreme Court on appeal and the Court held that a threat by the State to realise the tax from the assessee without the authority of law by using coercion is sufficient to move the Court.

1363. Writ lies only if there is infringement of Article 32

A petition for a writ under Article 32 of the Constitution is not maintainable unless there has been a violation of some fundamental right: *Bhagwandas v. Union of India*, A.I.R. 1956 S.C. 176

The argument that the impugned Act violated the guarantee of freedom of inter-State and inter-State trade or business embodied in Article 301 of the Constitution cannot be urged in a petition under Article 32 as it is not a fundamental right conferred by Part III of the Constitution which can be enforced by a petition under Art 32: *Ram Chandra v. State of Orissa*, A.I.R. 1956 S.C. 298.

1365. Appropriate proceedings, meaning of

The argument that Art. 32 does not confer upon a citizen the right to move the Supreme Court by an original petition but merely gives him the right to move the Court by an appropriate proceeding according to the nature of the case is not correct. It was said that in a case where the petitioner has moved the High Court by a writ petition under Art. 226 all that he is entitled to do under Art. 32 (1) is to move the Supreme Court by an application for special leave under Art. 136 as it was said is the effect of the expression "appropriate proceeding" used in Art. 32 (1). The Court held that the expression "appropriate proceedings" has reference to proceeding which may be appropriate having regard to the nature of the order, direction or writ which the petitioner seems to obtain from the court. The appropriateness of the proceedings would depend upon the particular writ or order which he claims and it is in that sense that the right was conferred on the citizen to move the court by appropriate proceedings. Whenever the grievance is that the fundamental right has been violated, the citizens can move the court by an original petition: *Daryao v. State of U.P.* A.I.R. 1961 S.C. 1461

1366. Executive order passed on subjective satisfaction not liable to be quashed in writs

The satisfaction of the authority which justified the use of the power under Rule 30 of the Defence of India Rules and confirmation of the order of detention are not subject to judicial review, for the order of detention without trial is pre-eminently an executive act. The subjective satisfaction of the detaining authority is a condition of the order and if that condition is shown to exist, the Courts have no power to enquire into the sufficiency of materials on which the order is made or the propriety or expediency of making the order. It is the satisfaction of the prescribed authority which is determinative of the validity. But this will not exclude the courts to investigate into the compliance with the procedural safeguards imposed by the statute, or into the existence of prescribed conditions precedent to the exercise of power, or into a plea that the order was made *mala fide* or for a collateral purpose. That, however, is not judicial review of the order: *Sadhu Singh v. Delhi administration*, A.I.R. 1966 S.C. 94

In *Laxmanappa Hanumantappa v Union of India*, 1955-1 S.C.R. 769 at page 772, 773 the court held that as there is a special provision in Art. 265 of the Constitution that no tax shall be levied or collected except by authority of law, clause 1 of Art. 31 must be regarded as concerned with deprivation of property otherwise than by imposition of collection of tax and as the right conferred by Art. 265 is not a fundamental right conferred by Part III of the Constitution, it cannot be enforced under Art. 32. In other words, the decision was that the petition filed before the Court under Art. 32 was not maintainable; but Mahajan, C.J.; who spoke for the Court proceeded to observe that "even otherwise in the peculiar circumstances that have arisen it would not be just and proper to direct the issue of any of the writs the issue of which is discretionary with this the Court". The learned Chief Justice has also added that when this position was put to the counsel he fairly and rightly conceded that it was not possible for him to combat this position. To the same effect are the observations made by the same Learned Chief Justice in *Gopal das Mehta v. Union of India*, 1955-4 S.C.R. 773. But it would be difficult to say that the issue of an appropriate writ under Art. 32 is a matter of discretion, and that even if the

petitioner proves his fundamental rights and their unconstitutional infringement the court nevertheless can refuse to issue an appropriate writ in his favour. Moreover the above observations were reiterated. The subsequent decision of the court in *Basheshwar Nath v. Commissioner of Income-Tax, Delhi and Rajasthan*, 1959 Sup (1) S.C.R. 528 tends to show that if a petitioner makes out a case of illegal contravention of his fundamental rights he may be entitled to claim an appropriate relief and a plea of waiver cannot be raised against his claim. The tenor of this judgment seems to emphasise the basic importance of the fundamental rights guaranteed by the Constitution and the effect of the decision appears to be that the citizens are ordinarily entitled to appropriate relief under Art. 32 once it is shown that their fundamental rights have been illegally or unconstitutionally violated: *Daryao v. State of U. P.*, A.I.R. 1961 S.C. 1461.

1367. Question of fact and Article 32.

The argument was that no body has the fundamental right that the Court must entertain a petition or decide the same when disputed questions of fact arise. But that is not a correct approach to the question. Clause (2) of Art. 32 confers power on Court to issue directions or orders or writs of various kinds referred to therein. The Court may say that any particular writ asked for is or is not appropriate or it may say that the petitioner has not established any fundamental right or any breach thereof and accordingly dismiss the petition on merits. It is wrong to say that on an application under article 32, the Court may decline to entertain the same on the simple ground that it involves the determination of disputed questions of fact or on any other ground. If this argument was to prevail then the Court would be failing in its duty as the custodian and protector of the fundamental rights. It is true that on the 'view' that the Court is bound to entertain a petition under article 32 and to decide the same on merits it may encourage litigants to file many petitions under Article 32 instead of proceeding by way of a suit. But that consideration cannot by itself, be a cogent reason for denying fundamental rights of a person to approach the Court for the enforcement of his fundamental right which may, *prima facie*, appear to have been infringed. Further, questions of fact can and very often are dealt with on affidavits. In *Chiranjitlal Choudhary's case* 1950 S.C.R. 869 the Court did not reject the petition in limine on the ground that it required the determination of disputed questions of fact as to there being other companies equally guilty of mismanagement. It went into the facts on the affidavits and held *inter alia*, that the petitioner had not discharged the onus that lay on him to establish his charge of denial of equal protection of the laws. That decision was clearly one on merits and is entirely different from a refusal to entertain the petition at all. In *Kathi Raning Rawat v. State of Saurashtra*, 1952 S.C.R. 435 the application was adjourned in order to give the respondent in that case an opportunity to adduce evidence before the Court in the form of an affidavit. An affidavit was filed by the respondent setting out facts and figures relating to an increasing number of incidents of looting, robbery, dacoity, nose cutting and murder by gangs of dacoits in certain areas of the State in support of the claim of the respondent State that "the security of the State and public peace were jeopardised and that it became impossible to deal with the offences that were committed in different places in separate courts of law". The Court found no difficulty in dealing with that evidence adduced by affidavit and in upholding the validity of the decision on merits although the evidence was under challenge. That was also where disputed questions of fact arose.

In the case of *Ram Krishna Dalmia v. Justice Sr.R. Tendolkar*, A.I.R. 1958 S.C. 538 the respondent State relied on the affidavit of the Principal Secretary to the Finance Ministry setting out in detail the circumstances which led to the issue of the impugned notification and the matter recited therein and the several reports referred to in the said affidavit. It was urged that reference could not be made to any extraneous evidence and that the basis of classification must appear on the face of the notification itself and that the Court should not go into disputed questions of fact. The Court overruled that objections and held that there could be no objection to the matters brought to the notice of the Court by the affidavit of the Principal Secretary being taken into consideration in order to ascertain whether there was any valid basis for treating the petitioners and their companies as a class by themselves. It is possible very often to decide question of fact on affidavits. If the petition and the affidavits in support thereof are not convincing and the court is not satisfied that the petitioner has established his fundamental right or any breach thereof, the Court may dismiss the petition on the ground that the petitioner has not discharged the onus that lay on him. The Court may, in some appropriate cases, be inclined to give an opportunity to the parties to establish their respective cases by filing further affidavits or by issuing a commission or even by setting the application down for trial on evidence, as has often been done on the original side of the High Courts of Bombay and Calcutta, or by adopting some other appropriate procedure. Such occasions will be rare indeed and such rare cases should not be regarded as a cogent reason for refusing to entertain the petition under Article 32 on the ground that it involves disputed questions of facts : *K. K. Kochuni v. State of Madras* A. I. R. 1959, S. C 725.

1368. Taxing authority entitled to act judicially no violation of fundamental rights.

Looking at the matter from the aspect of the nature of the right which is capable of being enforced under Article 32 the same conclusion is reached when the provisions of a taxing law entitle a taxing authority to assess and levy a tax and for these purposes to decide certain matters judicially and give binding effect to its decision and none of the provisions of that law are void under Article 13 or otherwise invalid the right enforceable under Article 32 would be the right to carry on business subject to the payment of the tax as assessed by the taxing authority and not a right to carry a trade or business free from the liability. It makes no difference even if the assessment of the tax is based on erroneous construction of the taxing law, in as much as the right to have a correct determination of the tax is not part of the fundamental right to carry on business but flows only from the taxing law. In such a case nothing is left for being enforced under Article 32 when the taxing authority does no more than assess, and levy a tax after determining it : *Ujjam Bai v. State* A.I.R., 1962 S. C. 1621.

1369 Taxing law when can be challenged under article 32.

The question of enforcement of a fundamental right under article 32 will arise if a tax is assessed under a law which is (a) void under article 13 or (b) is ultra vires the Constitution or (c) where it is subordinate legislation, it is ultra vires the law under which it is made or is inconsistent with any other law in force: *Ujjam Bai v. State*, A.I.R., 1962 S. C. 1621.

CHAPTER XXIX

SERVICES

SYNOPSIS

- 1370. General
- 1371. Discharge—When Penal
- 1372. Suspension
- 1373. Suspension with retrospective effect
- 1374. Suspension during leave
- 1375. Stigma
- 1376. Dismissal and removal—Difference
- 1377. Preliminary enquiry
- 1378. Difference in temporary and permanent posts
- 1379. Nature of protection given by Article 311
- 1380. Reduction in rank—Losing places in the same cadre—
No reduction in rank
- 1381. Penal action—What is
- 1382. Show cause—What is
- 1383. Departmental proceedings are quasi judicial
- 1384. Dismissal—Meaning of
- 1385. Reasonable opportunity—Explained
- 1386. Probationers—Holding of a formal enquiry is not
punishment
- 1387. Statement made in previous enquiry—cannot be—
made the basis for punishment—Fresh enquiry must
be held
- 1388. Chief Justice can delegate the power to hold enquiry
to any other judge
- 1389. Termination in accordance with service rules does
not attract Article 311
- 1390. Power of appointment includes power to dismiss or
suspend
- 1391. Ex-cadre appointee has no right over the cadre
appointee
- 1392. Person entitled to no pay if he does not join
- 1393. Merger—Effect on servants
- 1394. Pleasure of President—Meaning of
- 1395. Rules should not violate fundamental rights
- 1396. Minimum age of retirement should be fixed by
rules
- 1397. Resignation—Article 311 does not apply

1398. Protection of Article 311 when available
1399. Reversion from temporary post not per se reduction in rank
1400. Rule of pleasure of crown not adopted in India
1401. High Court can suspend a judicial officer pending final order by Government
1402. Rules framed in 1955 under an act in 1951 when there was no Council of States are not repugnant of Article 312
1403. Members of Secretary of State Services—Enquiry under rules 55 of the (Classification, Control and appeal) Rules not essential
1404. Pension—Reduction in pension is not reduction in rank—Article 311 is not attracted
1405. Probationer—Casting aspersion—No opportunity given to rebut the aspersions—Discharge is hit by Article 311
1406. Demonstration cannot be banned
1407. Government servants enjoy all fundamental rights
1408. Suspension in second inquiry—can be imposed
1409. Civil Procedure Code—Order 2 Rule 2—The bar of order 2 is not applicable to Article 226
1410. Probationer and temporary servants entitled to the protection of Article 311 if the order is penal
1411. Malafide—Probationer reverted—Order quashed
1412. Non-payment of subsistence allowance is not punishment
1413. Reversion—persons holding officiating post
Reversion to original post does not violate Article 311
1414. Probationers—Not entitled to the protection of Article 311 if the order is not penal
1415. Article 311 is proviso to Article 310
1416. Dismissed, removed, and reduction in rank—
Meaning of
1417. Effect of Independence on Indian Civil Service
1418. Leave can be revoked
1419. Government can differ from the finding of facts recorded by enquiry officer
1420. Rules cannot violate 311.
1421. Changed circumstance—Meaning of
1422. Disciplinary matter—Meaning of
1423. Privilege—Constitution of India—Article 163 (3)
Advice given by the Council of Minister—is a privileged document
1424. Article 217—President is competent to determine the age of judges of High Court

- 1425 Standard of proof—Proof as required in criminal cases need not be present in departmental enquiries
- 1426 Criminal trial—Judgment given—Not binding on enquiry officer in departmental proceedings
- 1427 Charge sheet of facts form single document
- 1428. Temporary servant—holding an enquiry—Stigma—
- 1429 Consorship is illegal
- 1430. Breach of statutory Rules—Relief can be sought
- 1431. Services of the State include High Court Staff

PUBLIC SERVICE COMMISSION

- 1432 Judicial Services
- 1433 Stage at which the Public Service Commission is to be consulted
- 1434 Memorials or petition
- 1435 Provisions of article 320 (3) are not mandatory
- 1436 Regulations made under proviso to Article 320—Position of
- 1437 Article 320 does not control Article 311
- 1370. General.

The power of regulating the recruitment and conditions of service given by Article 309 cannot be exercised with respect to certain appointments. Thus the appointment of the Attorney General of India and the Advocate-General are governed by Articles 76 & 165 of the Constitution. Similarly, Article 146(2) dealing with the appointment etc of officers of the Supreme Court, Article 148(5) dealing with the appointment etc. of the Indian Audit and Accounts, Article 229(2) dealing with appointment etc. of the officer of the High Courts, empower the authorities concerned under the said Article to make rules relating to the condition of services etc of these public servants. In these cases Article 309 will have no application. *P K Bose v Chief Justice*, (1965) 2 S C R 1331

The rules made regarding judicial officers under Article 309 have to be read subject to Articles 223 and 234 of the Constitution. In the case of judicial officers other than the District Judges, the rules made under Article 234 will be applicable and in the case of appointment of District Judges the provisions of Article 230 of the Constitution will apply. *Amar Singh v State of Rajasthan*, A I R 1958 S.C. 228. In the case of judicial officers the punishment will be awarded by the Government but, the rules framed under Article 309 read with Article 233 may provide that the enquiry into the charges will be made by the High Court.

Certain restrictions on the fundamental rights of a public servant can be imposed if warranted by the Constitution. For instance reasonable restrictions can be imposed on the grounds mentioned in Article 19(2) (6) with a view to secure efficiency integrity impartiality and responsibility. These restrictions should have a direct, proximate and rational relation to the conditions of service. These can be imposed on the grounds of public order under Article 19. *Kamrshwar v. State of Bihar*, A. I. R. 1962 S.C. 1166, 1170, *Ghosh v Joseph*, A. I. R. 1963 S.C. 812.

The right to go on strike is not a fundamental right as it is not included in the right to form association or unions. Rule 4 (A) Central Civil Services

(Conduct) Rules, 1955 in so far as it prohibits Government Servants from going on strike does not violate Article 19 (1) (a) (b) (c). *All India Bank Employees Association v. National Industrial Tribunal*, A. I. R. 1962 S.C. 171.

1371. Discharge—When Penal.

Discharge from service would be penal if there is forfeiture of salary. It would again be penal when there is withholding of increment or if the further chances of promotion or employment are affected: *Madan Gopal v. State of Punjab*, A. I. R. 1963 S. C. 53f. Similarly, when the seniority in the substantive rank is affected the action would be penal: *P. C. Wadhawa v. Union of India*, A. I. R. 1964 S. C. 423.

In order to find out whether the action taken is by way of penalty or not two-fold test can be applied, firstly whether the servant has been visited with evil consequences as a result of the impugned order or there is some forfeiture of the benefits already earned by him. If these tests are satisfied, it will be held that the civil servant has been punished in such a way as to attract clause 2 of Article 311: *Parshotam v. Union of India*, A. I. R. 1958 S. C. 36 : (1958) S. C. R. 1295 : *Champaklal v. Union of India*, 1964 S. C. 1854.

1372. Suspension.

When a servant is under suspension he does not perform the normal duties which he can otherwise perform. Suspension of a contract of service merely means postponement of contract or keeping the contract in abeyance. When a civil servant is suspended he does not cease to be a Government servant and he cannot seek employment at some other place. Similarly the employer has some duty towards the servant. The master is under a duty to pay subsistence allowance to the servant : *Khem Chand v. Union of India*, A. I. R. 1963 S. C. 687.

1373. Suspension with retrospective effect.

An order of suspension cannot be made retrospective because the very word suspension signifies that a person while holding or performing certain functions is debarred for the time being from performing further function. The very word suspension is opposed to the idea of suspending retrospectively. There can be no sense in suspending a man from working during a period which has passed.

Thus where one suspension order is held to be bad, the civil servant must be held to have been in service between the date of the previous invalidated order and the date on which that order is declared to be bad. If subsequent valid order of suspension is made, the civil servant will be entitled to get the salary between the period of first invalid suspension order and the second order of suspension : *Moti Ram v. N. E. Railway*, A. I. R. 1964 S. C. 600.

However, a situation may arise where certain departmental rules such as the Civil Services (Classification, Control and Appeal) Rules may provide for retrospective suspension. These rules have been held to be valid by Supreme Court because in such cases retrospective order of suspension is 'passed in accordance' with rules of service having force of law : *Khem Chand v. Union of India*, A. I. R. 1963 S. C. 687; *State of A. P. v. Rama Rao*, A. I. R. 1963 S. C. 1723.

1374. Suspension during leave.

A Government servant who proceeds on leave preparatory to retire-

ment is on leave and cannot be said to have retired from the date from which the leave commences. A Government servant is in service till his service terminates and this termination take place only when there is dismissal, removal or retirement. The date on which a person applies for leave preparatory to retirement cannot be considered as the date of retirement. Thus a servant on leave preparatory to retirement does not cease to be servant. There is no bar to suspend a servant on leave preparatory to retirement. The Government servant on leave or suspension holds a lien on his permanent post; *Partap Singh v. State*, A. I. R. 1964 S. C. 72.

1375. Stigma

When, the order referred to the fact that the servant was found undesirable to be retained in Government service, it expressly casts a stigma on the servant and must be held to be an order of dismissal and not a mere order of discharge. To say that it is undesirable to continue a temporary servant is very much different from saying that it is unnecessary to continue him. In the first case a stigma attaches to the servant, while in the second case, termination of service is due to the consideration that a temporary servant need not be continued, and in that sense no stigma attaches to him. Any one who reads the order in a reasonable way would naturally conclude that the servant was found to be undesirable, and that must necessarily import an element of punishment which was the basis of the order and was its integral part. When an authority wants to terminate the services of a temporary servant it can pass a simple order of discharge without casting any aspersion against temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant it would be idle to suggest that the order is a simple order of discharge. As the impugned order was construed as one of the dismissal in this case, and the servant had been denied the protection guaranteed to temporary servants under section 240(3) of the Government of India Act 1935, or Article 311(2) of the Constitution, the order was quashed: *Jagdish Mittar v. Union of India*, A. I. R. 1964 S. C. 449.

1376 Dismissal and removal - Difference

There is difference between dismissal and removal. Where a person is dismissed the civil servant becomes ineligible for re-employment in the Government service but where a person is removed, no such disqualification attaches: *Satish Anand v. Union of India*, A. I. R. 1953 S. C. 250. When an order made is that the services of a person be dispensed with, it will amount to removal: *State of Orissa v. Govindadas*, (1953) S. C. (C/A 412/58).

The words actually used in the order of termination are not conclusive to show as to whether the order is one of dismissal or removal: *Parshotam v. Union of India*, A. I. R. 1958 S. C. 36 : (1953) S. C. R. 823 : *State of Orissa v. Ram Narayan* A. I. R. 1961 S. C. 176. Even words such as 'discharge' or 'retrenched' may constitute dismissal or removal if the order results in penal consequences.

1377. Preliminary enquiry

A preliminary enquiry is usually held to determine whether a *prima facie* case for a formal departmental enquiry is made out and it is very necessary that the two should not be confused.

The mere fact that some kind of preliminary enquiry is held against a temporary servant and following that enquiry the services are dispensed with in accordance with the contract or the specific service rule would not mean that the termination of service amounted to infliction of punishment of dismissal or removal within the meaning of Article 311(2). Whether such termination would amount to dismissal or removal within the meaning of Article 311(2) would depend upon facts of each case.

1378. Difference in temporary and permanent posts.

An appointment to a temporary post gives a civil servant no right to hold it and such an appointment can be terminated unless it has ripened into quasi permanent status. An appointment to a permanent post gives the person so appointed a right to hold the post until he attains the age of superannuation or is compulsorily retired after having put in the requisite number of year's service. In such an appointment service cannot be terminated except on the ground of inefficiency, misconduct or negligence and unless these allegations are established against him after a proper enquiry and after due notice: *Purshotam Lal Dhiagra v. Union of India*, A. I. R. 1958 S.C. 36.

1379. Nature of protection given by Article 311.

Article 311 gives double protection to persons who come under the category of the persons eligible for such protection. The first safeguard is that only the appointing authority can punish the civil servant i. e. the dismissal, removal or reduction in rank can be ordered only by the authority which made the appointment. The second safeguard is that the civil servant must be given a reasonable opportunity to show cause in conformity with the principles of natural justice before an order of dismissal, removal or reduction in rank is passed: *Purshotam Lal Dhiagra v. Union of India*, A.I.R. 1958 S.C. 36.

1380. Reduction in rank—Losing places in the same cadre—No reduction in rank.

It was contended that though there may not have been any disciplinary proceedings taken against the civil servant, the effect of the order was that the civil servant was reduced by eight places in the list of Subordinate Judges, and that in law this amounted to reduction in rank, within the meaning of Article 311 (2) of Constitution. It was held that there is no substance in this contention because losing places in the same cadre namely of Subordinate Judges does not amount to reduction in rank, within the meaning of Article 311 (2). The argument was that rank in accordance with dictionary meaning, signifies relative position or status or place. The expression "rank" in Article 311 (2) has reference to a person's classification and not his particular place in the same cadre in the context of the hierarchy of the service to which he belongs. Hence in the context of the Judicial Service of West Bengal, "reduction in rank" would imply that a person who is already holding the post of a Subordinate Judge has been reduced to the position of a Munsif, the rank of a Subordinate Judge being higher than that of a Munsif. But Subordinate Judge in the same cadre hold the same rank though these have to be listed in order of seniority in the Civil List. Therefore losing some places in the seniority list is not tantamount to reduction in rank. It was held that in the circumstances the provision of Article 311 (2) of the Constitution are not attracted to this case: *High Court Calcutta v. Amal Kumar*, A.I.R. 1962 S.C. 1704.

Where the number of posts to be filled is less than the number of persons under consideration for those posts, it would be a case of many being called and few being chosen. The fact that the High Court made its choice in a particular way cannot be said to amount to discrimination against the plaintiff. *High Court Calcutta v. Amal Kumar* A.I.R. 1962 S.C. 1704.

1381. Penal action—What is

In order to find out whether the action taken is by way of penalty a two-fold test can be applied. Firstly, whether the civil servant has been visited with evil consequences as a result of the impugned order and secondly if there is forfeiture of the benefits already earned by him. If these tests are satisfied, it can be said that a civil servant has been punished in such a way so as to attract clause 2 of Article 311: *Parshoram v. Union of India*, A. I. R. 1958 S. C. 36 (1958) S. C. R. 1295; *Champaklal v. Union of India*, A. I. R. 1964 S. C. 1854.

1382. Show cause—What is

Show cause is a technical term used in the sense that a party is given an opportunity to explain his case i. e. to offer defence and prove that the allegations levelled against him are not correct or in other words it means that the accused should answer or give reply to charges to prove his innocence.

Under the Indian Constitution this opportunity to prove innocence is given twice before the final order resulting in dismissal, removal or reduction in rank is passed: *Bachitar Singh v. State of Punjab*, A. I. R. 1963 S. C. 395; *John v. State of T. C.*, A. I. R. 1955 S. C. 160; *Khem Chand v. Union of India*, A. I. R. 1958 S. C. 300; *State of Assam v. Bimal*, A. I. R. 1963 S. C. 1612.

1383. Departmental proceedings are quasi judicial

The nature of the proceedings held against a public servant under the statutory rules to determine whether he is guilty of the charges framed against him or not is quasi judicial. There is no doubt that a writ of *certiorari* can be claimed by a public servant, if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence. It is not essential to prove that the exercise of power is *malafide*, if it is shown that the order is based on no evidence: *Union of India v. H. C. Goel*, A. I. R. 1964 S. C. 364; *Bachitar Singh v. State of Punjab*, A. I. R. 1963 S. C. 342; *Sree Ram Rao v. State of Andhra Pradesh*, A. I. R. 1963 S. C. 1723.

The mere fact that some kind of preliminary enquiry is held against a temporary servant and following that enquiry the services are dispensed with in accordance with the contract or the specific service rule would not mean that the termination of service amounted to infliction of punishment of dismissal or removal within the meaning of Article 311(2). Whether such termination would amount to dismissal or removal within the meaning of Article 311(2) would depend upon facts of each case.

1378. Difference in temporary and permanent posts.

An appointment to a temporary post gives a civil servant no right to hold it and such an appointment can be terminated unless it has ripened into quasi permanent status. An appointment to a permanent post gives the person so appointed a right to hold the post until he attains the age of superannuation or is compulsorily retired after having put in the requisite number of year's service. In such an appointment service cannot be terminated except on the ground of inefficiency, misconduct or negligence and unless these allegations are established against him after a proper enquiry and after due notice: *Purshottam Lal Dhingra v. Union of India*, A. I. R. 1958 S.C. 36.

1379. Nature of protection given by Article 311.

Article 311 gives double protection to persons who come under the category of the persons eligible for such protection. The first safeguard is that only the appointing authority can punish the civil servant i. e. the dismissal, removal or reduction in rank can be ordered only by the authority which made the appointment. The second safeguard is that the civil servant must be given a reasonable opportunity to show cause in conformity with the principles of natural justice before an order of dismissal, removal or reduction in rank is passed: *Purshottam Lal Dhingra v. Union of India*, A.I.R. 1958 S.C. 36.

1380. Reduction in rank—Losing places in the same cadre—No reduction in rank.

It was contended that though there may not have been any disciplinary proceedings taken against the civil servant, the effect of the order was that the civil servant was reduced by eight places in the list of Subordinate Judges, and that in law this amounted to reduction in rank, within the meaning of Article 311 (2) of Constitution. It was held that there is no substance in this contention because losing places in the same cadre namely of Subordinate Judges does not amount to reduction in rank, within the meaning of Article 311 (2). The argument was that rank in accordance with dictionary meaning, signifies relative position or status or place. The expression "rank" in Article 311 (2) has reference to a person's classification and not his particular place in the same cadre in the context of the hierarchy of the service to which he belongs. Hence in the context of the Judicial Service of West Bengal, "reduction in rank" would imply that a person who is already holding the post of a Subordinate Judge has been reduced to the position of a Munsif, the rank of a Subordinate Judge being higher than that of a Munsif. But Subordinate Judge in the same cadre hold the same rank though these have to be listed in order of seniority in the Civil List. Therefore losing some places in the seniority list is not tantamount to reduction in rank. It was held that in the circumstances the provision of Article 311 (2) of the Constitution are not attracted to this case: *High Court Calcutta v. Amal Kumar*, A.I.R. 1962 S.C. 1704.

against him after supplying him with a charge sheet and he must be allowed to reasonable opportunity to meet the allegations contained in the charge sheet. In the present case preliminary enquiries of a general type were held, the reports did not show that the servant was guilty of the offence for which he was ultimately dismissed from service. The delay made in giving the appellant the charge sheet as well as in communicating to him the final order of dismissal showed that the authorities did not think that time was the essence of the matter and so there was hardly any justification for not holding a formal and proper enquiry after the appellant was given a charge sheet on October 17, 1951. It is wrong to say that no prejudice had been caused to the civil servant as a result of the Government's failure to hold an enquiry against him after supplying him with a charge sheet. The departmental enquiry is not an empty formality. It is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against a civil servant and to hold that in view of the admissions made by him in some other enquiry the civil servant is guilty. This is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services: *Jagdish Parsad v. State of Mysore*, A. I. R. 1961 S. C. 1070.

1388. Chief Justice can delegate the power to hold enquiry to any other judge.

Where charges are made against the member of High Court staff, Chief Justice is competent to delegate its power to another judge to hold enquiry. *P. K. Bose v. Chief Justice*, A. I. R. 1955 S. C. 284.

1389. Termination in accordance with service rules does not attract Article 311.

There is no distinction between termination of services in accordance with contract and termination in accordance with the service rules. Thus a person employed on a temporary basis whose services can be dispensed with by one month's notice would not attract Article 311. Similar is the case with probationers. If the civil servant fails to make use of opportunities provided to him and does not exhibit his ability the termination of services in accordance with the service rules does not amount to dismissal or removal from service and it would not attract Article 311. *Hartwell Prescott Singh v. Uttar Pradesh Government*, A. I. R. 1956 S. C. 886.

1390. Power of appointment includes power to dismiss or suspend.

Article 229(i) which makes the Chief Justice the appointing authority gives ample power to dismiss and suspend the members of High Court staff. This result from section 16 of the General Clauses Act, which by virtue of Article 367(i) of the Constitution applies to the construction of the Constitution also, Section 16(i) of General Clause Act clearly says that the power of appointment includes the power to suspend or dismiss. *P. K. Bose v. Chief Justice*, 1955 S. C. 285.

1391. Ex-cadre appointee has no right over the cadre appointee
A person appointed outside the cadre has no right to claim seniority in the cadre post. Thus where a person is appointed permanently to a post outside the cadre of the regular establishment of the Director of India Medical Service, he is not entitled to claim seniority in the

the right of reasonable opportunity of showing cause twice before the order of dismissal removal or reduction is passed. The reasonable opportunity envisaged by the provision under consideration includes.

- (a) An opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
- (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally
- (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively purposes to inflict one of the three punishments and communicates the same to the Government servant; *Khem Chand v. Union of India*, A. I. R. 1958 S. C. 300; 1958 S. C. A. 222; 1958 S. C. J 49; 1958 S. C. R. 1080. It is of the utmost importance that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after supplying him with a charge sheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the charge sheet: *Jagdish Prasad v. State of M. P.*, A. I. R. 1961 S. C. 1010 *Kapur Singh v. Union of India*, A. I. R. 1963 S. C. 493; *Hukam Chand v. Union of India*, A. I. R. 1959 S. C. 536.

1386. Probationers—Holding of a formal enquiry is not punishment.

The enquiry against the civil servant was for ascertaining whether he was fit to be confirmed or not. An order discharging a public servant, even in case of a probationer, in an enquiry on charges of misconduct, negligence, inefficiency or other disqualification may be by way of punishment but an order discharging a probationer following upon an enquiry to ascertain whether he should be confirmed is not of that nature. In *Gopi Kishore Prasad's case* A. I. R. 1960 S. C. 639, the public servant was discharged from service consequent upon an enquiry into alleged misconduct the enquiry officer having found that the public servant was unsuitable for the post. The order was not merely discharging a probationer following upon an enquiry to ascertain whether he should be continued in service but it was an order as observed by the Court "clearly by way of punishment." The fact of the holding of an enquiry is not decisive of the question. What is decisive is whether the order is by way of punishment in the light of the tests laid down in *Parsholam Lal Dhingra's case* 1953 S. C. R. 828; A. I. R. 1958 S. C. 38; *State of Orissa v. Ram Narayan Dass*, A. I. R. 1961 S. C. 177.

1387. Statement made in previous enquiry—cannot become the basis for punishment—Fresh enquiry must be held.

It is of the utmost importance that in taking disciplinary action against a public servant proper departmental enquiry must be held

a civil servant without imposing a limitation in that behalf, that such civil servant should have put in a certain minimum period of service, it would be declared invalid and the retirement ordered under it would amount to removal within the meaning of Article 311 : *Moti Ram v. N. W. F. Province*, A. I. R. 1964 S. C. 600 ; *Gurdev Singh v. State*, A. I. R. 1964 S. C. 1585.

1397. Resignation—Article 311 does not apply

Article 311 has no application where a Government servant leaves the service voluntarily. The termination of service must be against the will of civil servant. Where a civil servant seeks permission to retire and resigns, Article of the Constitution 311 is not attracted. But where before the permission to retire is granted, the civil servant makes an application to revoke his prayer the normal rule would come into play. However after the permission is granted and then the officer applied for permission to resume his duties and the same is refused, there cannot be any question of application of Article 311. Similarly, where a Government servant is given the option to voluntarily retire on a proportionate pension as an alternative to dismissal and he chooses to retire, he cannot challenge the validity of the order on the ground that the provisions of Article 311(2) have not been complied with : *Jairam v. Union of India*, A. I. R. 1954 S. C. 584.

1398. Protection of Article 311 when available.

Whatever was contained in section 240 of the Government of India Act 1935 has been reproduced in Article 311 of the Constitution. Whatever before was a statutory protection has now become a constitutional protection. The words used in Article 311 are dismissed, removed and reduced in rank and whenever these three punishments are to be imposed the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken. But if the idea is not to impose any punishment there would be no applicability of Article 311: *Purshotam Lal Dhingra v. Union of India*, A.I.R. 1958 S.C. 36.

1399. Reversion from temporary post not per se reduction in rank

Reversion from a temporary post cannot be reduction in rank because there is no right vested in a civil servant to hold the post. Before a temporary person can ask for relief under Article 311 he must establish that the reversion was by way of punishment or penalty; *Hartwell Prescott Singh v. Uttar Pradesh Government* A.I.R. 1957 S. C. 886.

1400. Rule of pleasure of Crown not adopted in India.

The English rule regarding the holding of office by public servant only during the pleasure of the Crown has not been applied in India in its entirety and with all its rigorous implication. This rule of pleasure as it exist in the Indian Constitution existed also in Section 240 (1) of the Government of India Act 1935 and also in section 96 (b) (i) of the Government of India Act, 1915. The rule of pleasure of (Crown) President has been narrowed down by Article 311 which restrict the sphere of the power conferred by Article 309. *Parshotam Lal Dhingra v. Union of India* A.I.R. 1951 S. C. 36: *Moti Ram v. Union of India*, A.I.R. 1964 S.C. 600.

1401. High Court can suspend a judicial officer pending final order by Government.

A judge of the Madras High Court came to the conclusion that the charges against one of the subordinate judicial officers have been proved and an opinion was expressed that he should be dismissed

department : *Nohria Ram v. Director of General Health Service*, A. I. R. 1958 S. C. 113.

1392. Person entitled to no pay if he does not join
Where a person on the expiry of the leave insisted that he should be appointed to a particular post and did not report himself to the post where he was ordered to report himself, he is not entitled to claim pay for the period for which he abstained himself from doing work. The mere obtaining of the declaratory decree in his favour against which an appeal is preferred by the Government will be of no consequence. The preferring of the appeal puts the whole fate of the decree in a jeopardy. Moreover, in a declaratory decree no relief regarding promotion increment was claimed : *Nohria Ram v. Union of India*, A. I. R. 1958 S. C. 113.

1393. Merger—Effect on servants

When one State by reason of conquest, accession, merger or integration is absorbed by another State, all contracts of service executed between the State which goes into eclipse and its servant automatically terminate and thereafter those who choose to serve the new State are governed by such conditions as the new Government may choose to impose. This is in other words the application of the principle which governs the ordinary relationship of Master and Servant. Thus whenever there is a change of master, there comes into existence new conditions according to which the servant must be governed : *Amar Singh v. State of Rajasthan*, A. I. R. 1958 S. C. 228.

1394. Pleasure of President—Meaning of

The rule of English law expressed in the Latin phrase "*durant beneplacito*" (during the pleasure) has not been fully adopted by the Constitution of India. The absolute doctrine of pleasure as known to English law is controlled by Article 311 of the Constitution. Thus the pleasure of President has to be exercised in accordance with the requirement of Article 311 : *M. R. Dehu v. N. E. Frontier Railway*, A. I. R. 1964 S. C. 600 ; *P. L. Dhingra v. Union of India*, A. I. R. 1958 S. C. 36.

Under clause 1 of the article 310 a person occupying a civil post under the Government holds his office at the pleasure of the President or Governor as the case may be. But the right of the Government given under clause 1 of the article 310 is subject to the restriction imposed by Article 311. In other words before a Government servant holding a civil post can be dismissed, the procedure laid down in article 311 must be complied with : *Parshotam v. Union of India*, A. I. R. 1958 S. C. 38 ; *Khem Chand v. Union of India*, A. I. R. 1951 S. C. 300 ; *Pradip v. Ch. Justice*, 1955 (2) S. C. R. 1331.

1395. Rules should not violate fundamental rights

The existing rules, the amended rules or the law to be passed by the legislature should not contravene the provisions of the Constitution. If a rule is contrary to Articles 14, 15, 16, 19, 310 (1), 311 (1) and 312 (2) etc. it will have no effect and the action taken under it will be declared void. *P. K. Bose v. Chief Justice*, 1955 (2) S. C. R. 1331 ; *Kishori v. Union of India*, A. I. R. 1962 S. C. 1139 ; *State of Orissa v. Dhirendranath*, A. I. R. 1961 S. C. 1715 ; *Union of India v. Pandurang*, A. I. R. 1962 S. C. 630 ; *Jagannath v. State of U. P.*, A. I. R. 1961 S. C. 1245 (1252) ; *State of Orissa v. Bidyabansan*, A. I. R. 1963 S. C. 779.

1396. Minimum age of retirement should be fixed by rules

If any rule permits the appropriate authority to retire compulsorily

Article 320 of the Mysore Service Regulations. That article says that if the service has not been thoroughly satisfactory the authority sanctioning the pension should make such reduction in the amount as it thinks proper. There is a Note under this article which says that the full pension admissible under the Regulations is not to be given as a matter of course but rather to be treated as a matter of distinction. It was under this article that the Government acted when it reduced the pension to two thirds. Reduction in pension being a matter of discretion with the Government, it cannot therefore be said that it committed any breach of the Regulations in reducing the pension of the civil servant. *Narasimachar v State of Mysore*, A I R 1960 SC 243 at p 251.

1405 Probationer—Casting aspersion—No opportunity given to rebut the aspersions—Discharge is hit by Article 311

Though the respondent was only a probationer he was discharged from service really because the Government had on enquiry come to the conclusion rightly or wrongly that he was unsuitable for the post he held on probation. This is clearly by way of punishment and therefore he is entitled to the protection of Article 311 (2) of the Constitution. The argument pressed on behalf of the State of Bihar was that the respondent being a mere probationer could be discharged without any enquiry into his conduct being made and his discharge could not mean any punishment to him because he had no right to a post. It is true that if the Government came to the conclusion that the respondent was not fit and proper person to hold a post in the public service of the state it could discharge him without holding any enquiry into his alleged misconduct. If the Government proceeded against him in direct way without casting any aspersions on his honesty or competence his discharge would not in law have the effect of a removal from service by way of punishment and he would therefore have no grievance to ventilate in any court. But where instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding the civil servant as a dishonest and an incompetent officer he had the right in those circumstances to insist upon the protection of Article 311 of the Constitution. That protection not having been given to him the right to seek redress in court cannot be taken away. It was held that the respondent had been wrongly deprived of the protection afforded by Article 311 (2) of the Constitution and his removal from the service therefore was not in accordance with the requirements of the Constitution. *State of Bihar v Gopi Kishore*, 4 I R 1960 SC 689 at p 691.

1406 Demonstration cannot be banned

The argument that if the civil servants whose duty is to look into the administration, themselves resort to demonstration would lead to demoralisation is not sustainable. *Kameshwer v State of Bihar* A I R 1962 SC 1160.

1407. Government servants enjoy all fundamental rights

Simply because special provision had been made in regard to Service under the State in some of the Articles in Part III such as for instance in Articles 15, 16 and 18 (2) and (4) no inference can be drawn that the other Articles in which there was no specific reference to Government servants were inapplicable to them. The argument that the Constitution excludes Government servants as a class from the protection of the rights guaranteed by Articles in Part III was held to be unsustainable. *Kameshwer*, case, A I R 1962 SC 1160.

or removed from service. The report of enquiry was sent to the Government for taking necessary action. However meanwhile an order was passed by the High Court on 28th January, 1954 whereby the civil servant was suspended from office. The Government of Andhra Pradesh issued a notice to show cause on 12th of August, 1954 against dismissal or removal. It was held that order of suspension is justified and is covered by the power given in rule 13 of the Madras Civil Services (Classification, Control and Appeal) Rules under which High Court has the power to suspend. *Mohammad Ghouse v. State of Andhra*, A.I.R. 1957 S. C. 246.

1402 Rules framed in 1955 under an act of 1951 when there was no Council of States—Are not repugnant of Article 312.

The argument that the rules were promulgated in 1955 when the words omitted by the Constitution (Removal of Difficulties) order No. 11 had reappeared in Article 312 as much as there was no resolution of the Council of States, as required by that Article. The reappearance of these words in Article 312 has nothing to do with the *revivis* of the rules. The rules were framed under the power given to Central Government by the Act and if the Act was valid when it was passed, the Central Government would have power to frame rule under it, as it is a permanent measure. The Rules framed in 1955, therefore cannot be challenged on the ground that the omitted words reappeared in Article 312. The rules derive their force from the Act and the form in which Article 312 emerged, after the Constitution (Removal of Difficulties) Order No. 11. When this order came to an end it would not have any effect on the rules. *D. S. Garwal v. State of Punjab* A.I.R. 1959 S. C. 512. at p. 516.

1403. Members of Secretary of State Services—Enquiry under rules 55 of the (Classification Control and appeal Rules) not essential

The argument advanced was that an enquiry into the conduct of a former Secretary of State Service can be held only under the Classification, Control and Appeal Rules. The rule is that an order of dismissal, removal or reduction in rank shall not be passed without an enquiry either according to the procedure prescribed by the Public Servants (Inquiries) Act, 1850, or the procedure prescribed by the Classification, Control and Appeal Rules. The rule does not support the submission that even if an enquiry be held under the Public Servants (Inquiries) Act, 1850 before an order of dismissal or reduction is passed against a member of the civil servant another enquiry expressly directed under Rule 55 shall be made. This argument on behalf of the civil servant was held to be not sustainable. *Kapur Singh v. Union of India* A. I. R. 1960 S.C. 493 at p. 497.

1404. Pension—Reduction in pension is not reduction in rank—Article 311 is not attracted.

It was argued that as pension has been reduced to two thirds, the civil servant was entitled to notice in view of the provisions of Article 311 (2) of the Constitution before the Government decided to inflict that punishment on him and that this was not done in the notice of retirement. This contention was held baseless as Article 311 (2) does not deal with the question of pension at all, it deals with three situations namely (i) dismissal (ii) removal and (iii) reduction in rank. To say that the reduction in pension is equivalent to reduction in rank is not the proper interpretation of Article 311. Reduction in rank applies to a case of a public servant who is expected to serve after the reduction. It has nothing to do with reduction of pension, which is specifically provided for in

The withholding of substance all advance during the period of suspension had no connection with the termination of service and did not follow as a consequence of it at all and cannot be regarded as punishment: *Union of India v. P. K. More*, A. I. R. 1962 S. C. 630.

1413 Reversion—persons holding officiating post—Reversion to original post does not violate Article 311.

It cannot be said that when a person officiating in a post is reverted for unsatisfactory work, the reversion amount to reduction in rank: *Prashotam Lal Dhingra v Union of India*, 1958 S. C. R 838 at page 842 A. I. R. 1958 S. C. 36 at page, *State of Bombay v. F. A. Abraham* A. I. R. 1962 S. C. 794, *Dhingra's cases* 1958 S. C. R. 828 at page 833 : *State of Bombay v. A. F. Abraham* A. I. R. 1962 S. C. 794.

1414. Probationer—Not entitled to the protection of Article 311 if the order is not penal.

It is now well settled that the protection of Article 311 of the Constitution applies to temporary Government servant also where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment. But it is equally well settled that where the service of a temporary Government servant are not terminated by way of punishment Article 311 will not apply and the services of such a servant can be terminated under the terms of the contract or by giving him the usual one month's notice: See *Parshotam Dhingra v Union of India* 1958 SCR 828 : A. I. R. 1958 S. C. 36. Further it is equally well settled that a Government servant who is on probation can be discharged and such discharge would not amount to dismissal or removal within the meaning Article 311(2) and would not attract the protection of that Article where the services of a probationer are terminated in accordance with the rules and not by way of punishment. A probationer has no right to the post held by him and under the terms of his appointment he is liable to be discharged at any time during the period of his probation subject to the rules governing such cases: See *State of Orissa v Ram Narayan Dass* (1961) 1 S.C.R. 606 : A. I. R. 1961 S. C. 177. 'The appellant in the present case was undoubtedly a probationer. There is also no doubt that the termination of his service was not by way of punishment and cannot therefore amount to dismissal or removal within the meaning of Article 311. As a probationer he would be liable to be discharged during the period of probation subject to the rules in force in that connection. Thus a probationer is not entitled to the protection of Article 311(2) of the Constitution unless it is a case of simple discharge: *Rajindra Chandra v Union of India*, A. I. R. 1963 S. C. 1552.

1415. Article 311 is proviso to Article 310.

The language of Article 311 operates as a proviso to Article 310. The language used in Article is prohibitory. There is a limitation imposed on the exercise of pleasure of the President or the Governor in the matter of dismissal, removal or reduction in rank of Government servant. This in fact is the only constitutional protection in the whole constitution guaranteed to Government servant: *Khem Chand v. Union of India*, A. I. R. 1963 S. C. 1618.

1416. Dismissal, removed, and reduction in rank—Meaning of.

The expression dismissal, removal or reduced in rank are technical words taken from the service rules where they are used to denote three major categories of punishments: *Khem Chand v Union of India*, A. I. R. 1958 S. C. 300.

1408 Suspension in second inquiry—Can be imposed.

State Government is competent to order a fresh enquiry and therefore State Government can direct suspension of the Civil servant during the pendency of the enquiry. *Devindra Paratap v. State of Uttar Pradesh*, A. I. R. 1962 S. C. 1334.

1409 Civil Procedure Code—Order 2 Rule 2—The bar of order 2 is not applicable to Article 226.

The High Court had disallowed the salary prior to the date of the suit. The bar of order 2 of the Civil Procedure Code will not apply to a petition for a high prerogative writ under Article 226 of the Constitution, but where the High Court disallowed the claim of the Civil Servant for salary prior to the date of the suit the Supreme Court refused to interfere with the exercise of its discretion by the High Court: *Devindra Paratap v. State of Uttar Pradesh*, A. I. R. 1962 S. C. 512.

1410. Probationer and temporary servant entitled to the protection of Article 311 if the order is penal.

It has been held by the Supreme Court in *Parshotam Lal Dhingra v. Union of India*, 1958 S. C. R 828 : A. I. R. 1958 S. C. 36 that Article 311 makes no distinction between permanent and temporary posts and extends its protection equally to all Government servants holding, permanent or temporary post or officiating in any of them. But the protection of Article 311 can be available only where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. One of the tests laid down in that case for determining whether the termination of service was by way of punishment or otherwise is whether under the service rules, but for such termination the servant has the right to hold the post. Similarly a probationer cannot be punished for misconduct without complying with the requirements of Article 311. *Sukhbant Singh v. State of Punjab* A. I. R. 1962 S. C. 1171.

1411. Malafide—probationer reverted—Order quashed.

The sequence of events which led up to a departmental enquiry against him, his exoneration, his transfer, the unsuccessful attempt of the Deputy Commissioner to have the transfer cancelled followed by his being asked to stop collecting fund for a Government College and then by his reversion on May 20, 1952, would go to show that the reversion was not in ordinary course.

The omission of the Government to give reasons for reversion does not make the action any the less a punishment, and as the requirements of Article 311 were not fulfilled, as they ought to have been and as the Government wanted to give the reversion the appearance of an act done in the ordinary course entailing no penal consequences, the circumstances clearly show that the action of the Government was *malafide* and the reversion by way of punishment for misconduct without complying with the provisions of the Constitution was set aside. *Sukhbant Singh v. State*, A.I.R. 1962 S.C. 1711.

1412. Non-payment of subsistence allowance not punishment.

There is no doubt that a temporary servant may claim the benefit of Article 311 if the termination of the service was really by way of punishment. It was argued that the termination of the service was really by way of punishment for he had not been paid the subsistence allowance during the period of his suspension by the Government and obtained it only after he had taken proceedings under the Payment of Wages Act. This contention is unfounded because the refusal to pay the subsistence allowances does not indicate that the termination of service was by way of punishment. The refusal was only due to a misreading of the relevant rule by the Government.

no matter whether the order is by way of dismissal or not, Article 311 will apply. *Madan Gopal v. State of Punjab*, A.I.R. 1963 S. C. 531; *Champan v. Union of India*, A.I.R. 1964 S. C. 1854.

1421. Changed circumstances—Meaning of

The words "changed circumstances" as used in Article 314 mean the change in circumstances due to transfer of power in August 1947 and the coming into force of the Constitution in January 1950: *R. P. Kapur v. Union of India* A.I.R. 1961 S. C. 789.

1422. Disciplinary matter—Meaning of.

The words "Disciplinary matters," as used in Article 314 of the Constitution must be given the widest meaning. It will include suspension also. Suspension on departmental enquiry is also a measure of punishment. Both the types of suspension will come under the term "Disciplinary matters": *R. P. Kapur v. Union of India*, A.I.R. 1964 S. C. 787.

1423. Privilege—Constitution of India—Article 163(3)—Advice given by the Council of Minister—Is a privileged document.

The order of the Pepsu Government was really the minutes recorded in the course of Cabinet discussion. Under Article 163 (3) of the Constitution the question whether any, and if so what, advice was tendered by ministers to Governor shall not be inquired into in any court. In view of the constitutional protection and the reason underlying such protection these documents are not open to judicial review: *State of Punjab v. S. S. Sodhi*, A.I.R. 1961 S. C. 562 at page 532.

1424. Article 217—President is competent to determine the age of judges of High Court.

While determining what is the proper age of a judge of High Court, the factors which need to be taken into consideration and procedure which should be followed is more or less of discretion with the President. The discretion however is to be guided by procedure laid down in Article 217 (3). The procedure as laid down in Article 217 (3) requires consultation with the Chief Justice of India. It is implied that the judge concerned should be given an opportunity to state his version. But at the same time the decision reached at by the President of India is not open to review: *Jyoti Parkash v. Chief Justice, Calcutta High Court*, A. I. R. 1965 S. C. 961

1425. Standard of proof—Proof as required in criminal cases need not be present in departmental enquiries.

There is no warrant for the view that in considering whether a public officer is guilty of the misconduct charged against him the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied: *State of Andhra v. Sree Rama Rao*, A.I.R. 1963 S. C. 1723.

1426. Criminal trial—Judgment given—Not binding on enquiry officer in departmental proceedings.

The enquiry officer stated that the judgment of the magistrate holding a criminal trial against a public servant could not always be regarded as binding in a departmental enquiry against that public servant. It was held that by so stating the enquiry officer did not commit any error of law: *State of Andhra Pradesh v. Sree Rama Rao*, A.I.R. 1963 S.C. 1723.

1417. Effect of Independence on Indian Civil Service.

The effect of the political changes which came into force in India from 15th of August, 1947 on the services of the persons recruited to the Secretary of State's Services known as the Indian Civil Servant was that while the previous officers of the Indian Civil Service were under the Crown in the sense that these services were ultimately responsible to British Parliament, this responsibility now completely vanished when India acquired Independent status on 15th August, 1947 and an option was given to persons working in Indian Civil Service to continue or not to continue in service. Section 9 (1) (9) and 10 (2) of the Indian Independence Act, 1947 gives protection to persons who want to continue in service under the new set up: *State of Madras v Raj Gopalan*, A. I. R. 1953 S. C. 817.

1418. Leave can be revoked.

The Government is competent to revoke the leave granted to a civil servant. It is immaterial that leave is taken on account of retirement or otherwise. *Partap Singh v. State of Punjab*, A.I.R. 1964 S. C. 72.

1419. Government can differ from the finding of facts recorded by enquiry officer.

Finding of facts recorded by an enquiry officer entrusted with the work of holding a departmental enquiry under Rule 55 of the Civil Servant (Classification, Control and Appeal) Rules are not binding on the Government. The Government is competent to take a different view on evidence adduced against the Government servant and can come to the conclusion that the judgment of the enquiry officer was unsound and erroneous. Where the enquiry officer made a report in favour of the Government servant but the Government took a contrary view and issued a second notice which subsequently resulted in the dismissal of the Government servant, it was held to be in consonance with the constitutional safeguards afforded by Article 311 (1) and (2) of the Constitution: *Union of India v. H. C. Goel*, A.I.R. 1964 S.C. 364; *State of Jissam v. Pinal Kumar* 1963 S. C. 1612

1419. Rules cannot violate III

It is necessary to emphasise that the rule making authority contemplated by Article 309 cannot be validly exercised so as to curtail or effect the right guaranteed to public servants under Article 311 (2). Once the scope of Article 311 (1) and (2) is duly determined, it must be held that no Rule framed under Article 309 can trespass on the right: *Moti Ram v. N. E. Frontier Railway*, A. I. R. 1964 S. C. 600.

Allegation of a personal character made against a Chief Minister if not denied on oath, presumption may arise that the allegation are true. Denial by a Secretary of the department is wholly insufficient. In this case the action of the Government was struck down as *malafide*: *Madhav v. State of Mysore*, A. I. R. 1962 S. C. B.

This *malafide* exercise of power is always a ground for quashing an order and it cannot be made an exception in the case of probationers. Thus where the work of a probationer, was praised by the superior authorities and his service were terminated on the ground that he was not fit for work, it was held that the exercise of power was *malafide*: *Sukhbans Singh v. State of Punjab*, A.I.R. 1972 S. C. 1711.

It is immaterial that the words "dismissed" or "removed" have not been used in the order. If the order purports to dispense with the service with the effect that the Government servant is visited with evil consequences

against him or not. Where the Government servant does not avail of the second opportunity it is hardly necessary to consult the Commission as the servant has not offered any material for further consideration. *John v State of T C*, (1955) S C R 1011 A I R 1955 S C 160

1434 Memorials or petition

The petition or appeal presented by dismissed Government servant comes under the words memorial or petition and it cannot be rejected without consulting the Public Service Commission. *State of U P v Srivastava*, A I R 1957 S C 912

1435 Provisions of article 320(3) are not mandatory

The provisions of Article 320(3) are not mandatory these provisions are not rider to Article 311. There is no right conferred on a Public Servant by Article 320 and it cannot be said that if Public Service Commission is not consulted, there is any irregularity committed which would afford a public servant a cause of action in a court of law or in other words non-consulting of Public Service Commission is not justiciable. *State of U P v Manbodhan Lal* A I R 1957 S C 912

1436 Regulations made under proviso to Article 320—Position of

Once relevant regulations have been made under the proviso to Article 320 they are meant to be followed in letter and spirit. The requirement of consulting Public Service Commission is there with a view to create confidence in the mind of Services that there is an independent body which will look into disciplinary matters and that everything is not left to the whims of Executive. *State of Uttar Pradesh v Manbodhan Lal* A I R. 1957 S C 912

1437 Article 320 does not control Article 311

Article 320 does not in any way operate as a rider on Article 311. Article 320 does not confer any rights or privileges on an individual public servant. This Article further does not confer any constitutional guarantee of the nature conferred by Article 311. This article therefore if not complied with cannot be made a ground of attack nor does it act as a rider on the powers given by Article 311. *State of Uttar Pradesh v Manbodhan Lal*, A I R 1957 S C 912.

Charge sheet of facts form single document.

The charge and the statement of facts form part of a single document on the basis of which proceedings are started against the civil servant and it would be hypercritical to proceed on the view that though the civil servant was expressly told in the statement of facts which formed part of the charge-sheet that he had failed to record in the police diary that Durgalu was handed over to him, that ground of reprehensible conduct was not included in the charge and on that account the enquiry was vitiated. No objection was taken before the Deputy Inspector General or even before the Inspector General of Police that there was infirmity in the charge on that account and that infirmity had prejudiced the respondent in the enquiry. The respondent had full notice of the charge against him and he examined witness in support of his defence and made several arguments and representation before the Deputy Inspector General, the Inspector General of Police and the Government of Andhra Pradesh: *State of Andhra Pradesh v. Sree Rama Rao*, A.I.R. 1963 S. C. 1723.

1428. Temporary servant—Holding an enquiry—Stigma—imposed—Article 311 to be complied with.

The civil servant was a temporary employee and his employment was liable to be terminated by notice of one month without assigning any reason. The Deputy Commissioner however, did not act in exercise of this authority. The civil servant was served with a charge sheet setting out his misdemeanour and an enquiry was held in respect of the alleged misdemeanour and his employment was terminated because in the view of the enquiry officer with which view the Deputy Commissioner agreed the misdemeanour was proved. Such a termination was held to amount to casting a stigma affecting the future career of civil servant. The general principle of law is if instead of terminating the service of a temporary civil servant the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment because it puts a stigma on his competence and thus affects his future career. In such a case he is entitled to the protection of Article 311 (2) of the Constitution: *Madan Gopal v. State of Punjab* A.I.R. 1963 S.C. 531.

1429. Consorship is illegal.

The rules cannot impose pre-censorship: *Ghosh v. Joseph*, A. I. R. 1963 S.C. 812.

1430. Breach of statutory Rules—Relief can be sought.

See *P. K. Bose v. Chief Justice* 1955-2 S.C.R.

1431. Services of the State include High Court Staff.

The expressions services of the State include staff of the High Court whose salary etc. are charged upon the consolidated funds of State under Article 229: *Pradyat v. Chief Justice*, A. I. R. 1956 S.C. 285.

1432. Judicial Services.

There is a special provision contained in article 234 governing the judicial services and article 320 is subject to that article. *Pradyat v. Chief Justice*, A. I. R. 1956 S.C. 285.

PUBLIC SERVICE COMMISSION**1433. Stage at which the Public Service Commission is to be consulted.**

There is no hard and fast rule when it can be said that the Commission is to be consulted at a particular stage. It is enough if the Commission is consulted at some stage before the final order is passed. Normally it takes place at two stages, firstly to determine whether the Government servant is guilty of the charges and whether the proposed action should be taken

1439. Repugnancy—Meaning of.

The doctrine of repugnancy comes into existence when there is a conflict between the laws made by the States and the laws made by the Union legislature. Where the topics dealt with are different, no repugnancy can arise. *Ramji v. State of U. P.*, 1956 S.C.R. 393. In *Rani Raitana Prava Devi v. State of Orissa*, A.I.R. 1964 S.C. 1145, it was held that the term 'ruler' as occurring in Article 368 of the Constitution and Orissa Private Lands of Rulers (Assessment of Rent) Act is different and there is no repugnancy between the two. Section 10 of the Criminal Procedure Code will not prevail where section 129 (a) and 129 (b) of the Bombay Prohibition Act holds the field : *Pandit Ukhakole v. State of Maharashtra* A.I.R. 1963 S.C. 1531. A State enactment falling within Union List if inconsistent with Union laws, would be struck down : *State of West Bengal v. Union of India*, A.I.R. 1963 S.C. 1241. Taxation laws do not attract Article 31 and comes within Article 265 : *Ramji Lal v. Income Tax Officer*, 1951 S.C.R. 127 ; *Panna Lal v. Union of India*, 1957 S.C.R. 232. The deprivation of property in accordance with Article 265 cannot be challenged under Article 32 : *Lakshmanappa v. Union of India*, 1965 1 S.C.R. 769. An order of erst-while ruler of the Indian States having an existing law is saved by Article 372 : *State of Madhya Pradesh v. Gwalior Sugar Com.*, 1962 2 S.C.R. 619. Article 265 is subject to Article 13 and it should not violate part III of the Constitution : *K. T. Moopil Nair v. State of Kerala*, 1961 (3) S.C.R. 77. In the case of *Firm Ghulan Hussain v State of Rajasthan*, A.I.R. 1963 S.C. 379 it was held that the imposing of excise duty on import of Char Coal out of the State was not validly made.

1440. Union and State field, some instances.

The provisions of Sugarcane (Regulation of Supply and Purchase) Act, 1953, were held to be intra vires of U.P. Legislature : *Chaudhry Tikka Ram v. State of Uttar Pradesh*, A.I.R. 1956 S.C. 676. It cannot be said that the provisions of List I entry 56 are in any way violated when the State Government prescribes interview marks for admissions to Medical and Engineering College : *Chittarlekha v. State of Mysore*, A.I.R. 1964 S.C. 1825.

1441. Failure to comply Article 255, defect cannot be removed be legislature.

Though the clause "notwithstanding the aforesaid defects" emphatically points to the fact that the Legislature thought that it could legislate retrospectively, and by such retrospective legislation, it could itself cure the infirmity in question creeping due to the non-observance of provisions of Article 155. The Legislature however overlooked the fact that the infirmity in question can be cured only by obtaining the assent of the President and not by any Legislative fiat. The Legislature cannot itself cure the infirmity resulting from the non-compliance with Article 255 and all that it has to do in such a case is to obtain the assent of the President to cure such an infirmity : *Jawahar Lal v. State of Rajasthan*, A.I.R. 1966 S.C. 764.

1442. Failure to comply Article 255.

The Legislature is incompetent to declare that the failure to comply with Article 255 is of no consequence; the assent of the President to such declaration also does not serve the purpose which subsequent assent by the President can serve under Article 255 : *Jawahar Lal v. State of Rajasthan*, A.I.R. 1966 S.C. 764.

CHAPTER XXX

LEGISLATIVE COMPETENCY

SYNOPSIS

- 1438. Power of Parliament to legislate with respect to Union List and Concurrent List.
- 1439. Repugnancy—Meaning of.
- 1440. Union and State in some instances
- 1441. Failure to comply Article 255 defect cannot be removed by legislature
- 1442. Failure to comply Article 255, effect
- 1443. Power to validate unconstitutional subordinate legislation.
- 1444. Temporary Statute, effect of, expiry of
- 1445. Repealing Statute.

DELEGATED LEGISLATION

- 1446. General
- 1447. Subordinate Legislation
- 1448. Conditional Legislation
- 1449. Delegated Legislation
- 1450. Territorial Competency
- 1451. Maximum limit given, law is not invalid
- 1452. Tax may be imposed retrospectively and prospectively
- 1453. Expressed intention to be gathered

1438. Power of Parliament to legislate with respect to Union List, and Concurrent List.

The Union legislature has the predominance in making laws with respect to Union List as well as matters falling within the Concurrent List. The object of Concurrent List is to bring about uniformity in the field of legislation. The Parliament has power to legislate with respect to laws having application to the Union Territories: *Mittan Lal v. State of Delhi*, A.I.R. 1958 S. C. 682. In a case where two construction are possible, one which will avoid resort to the residuary powers will be preferred: *Subramanian v. Mntuswamy*, A.I.R. 1941 F. C. 47. The essential condition for the application of Article 254 (1) is that the existing law must be with respect to one of the matters in the Concurrent List: *Prem Nath v. State of Jammu & Kashmir*, 1959 2 S. C. A. 65.

The expression for such State or any part thereof as used in article 246 (3) of the Constitution cannot be taken to impose into entry 54 of List II the restriction that the sale or purchase referred to must take place within the territory of that State. All that it means is that the law which a State is empowered to take must be for the purposes of the State: *The State of Bombay v. United Motors*, 1953 S. C. R. 109.

amend law is a legislative power which also cannot be delegated. In *re Delhi Laws Act*, 1951 S.C.R. 747

The power to impose taxes is an essentially legislative function and the legislature should formulate a policy for fixation of the rate by a subordinate authority.

In the case of *Pritham Singh v. State Punjab* A.I.R. 1967 S.C. 930, the contention raised was that Section 32 FF of the Pepsu Tenancy and Agricultural Act 1955 suffers from the vice of excessive delegation, as the legislature without enumerating the relation or indicating the principles for ascertaining the relation abdicated its legislative function and delegated it to the State Government to prescribe the relation. The court held that this factor does not make the law void.

1450 Territorial competency of a law

The theory of territorial nexus is applicable to Sales Tax legislation. *Tata Iron & Steel Co. Ltd. v. State of Bihar* 1958 S.C. R. 1335. A distinction cannot be made in this respect between an affirmative and negative provisions. *Deep Chand v. State of U.P.* 1959 Supp.(2) S.C.R. 8. Legislature cannot go beyond its competency and infringe fundamental rights. See Special reference No 1 of 1964 A.I.R. 1964 S.C. 745. The Parliament is competent to make laws with regard to ancient and historical monuments situated in India and it will supersede a law made by State legislature. *Joshi v. State*, A.I.R. 1963 S.C. 1514.

1451. Maximum limit given, law is not invalid

Where the law provides that the licences may be granted in such forms, for such periods, on such terms and conditions and restrictions as may be prescribed or determined by the bye laws and on payment of fees determined by the market committee within such maxima as may be prescribed it cannot be called illegal. *Jan Mohammad v. The State of Gujarat*, A.I.R. 1966 S.C. 385.

1452. Tax may be imposed retrospectively and prospectively

It is well recognised that the power to legislate includes the power to legislate prospectively as well as retrospectively, and in that behalf, tax legislation is no different from any other legislation. If the legislature decides to levy a tax, it may levy such tax either prospectively or even retrospectively. When retrospective legislation is passed imposing a tax it may, in accordance with the common necessary to consider whether such retrospective taxation is reasonable or not. But apart from this theoretical aspect of the matter, the power to tax can be competently exercised by the Legislature either prospectively or retrospectively: *Jasaharmal v. State of Rajasthan*, A.I.R. 1966 S.C. 784.

1453 Expressed intention to be gathered

The fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament, namely, that the Court will have to find out the expressed intention

1443. Power to validate unconstitutional subordinate legislation.

The legislature can validate subordinate legislation which is declared null and void by the Courts and this can be done with retrospective effect: *J. & K Mills v. State of U. P.*, A.I.R. 1961 S. C. 1534; *State of Orissa v. P. K. Bose*, A.I.R. 1962 S. C. 945.

1444. Temporary statute, effect of, expiry of

When a temporary Act ceases no proceedings can be taken upon it, to further its affect unless it is so, provided in the Act itself: *Krishnan v. State of Madras*, 1951 S. C. R. 621; *State of U. P. v. Jagamandir* A.I.R. 1954 S. C. 683.

1445. Repealing statute.

The affect of a repealing statute is to obliterate from the records of Parliament the statute as if it never was passed. Where the repealing statute is passed, no substantive change in the law is to be applied beyond that, that it strikes out the Act which are repealed by it: *Jetha Nand v. State of Delhi*, 1960 S. C. J. 63. When statute is repealed, any statutory notification made under it stands abrogated. There is difference between repeal and amendment. The repeal means the destruction of the whole whereas amendment means destruction of a part. In an amendment the destruction may be followed by a creation of a new provision or a substitute.

DELEGATED LEGISLATION

1446 General

Subordinate, conditional and delegated Legislation is that which proceeds from an authority other than the sovereign power and is, therefore, dependant for its continued existence and validity on some superior authority. The legislature is competent to leave it to the judgment of a local administrative body as to the necessity of applying or introducing the Act in a local area: *In re Delhi Laws Act*, 1951 S. C. R. 474; *Bhainagar v. Union of India*, A.I.R. 1957 S. C. 478.

1447. Subordinate Legislation.

The terms implies that Legislature can confer powers upon a subordinate agency which may be administrative to make regulations for the purpose of carrying out the details of the scheme: *Hamdard Dawkhana v. Union of India*, A.I.R. 1:60 S. C. 554.

1448. Conditional Legislation.

A conditional Legislation is that where the Legislature prescribes that the legislation shall come into operation at all or in some particular area only upon an executive declaration or upon the happening of certain events: *Reghubar v. State of U. P.*, 1958 S. C. Petition No. 202-4 of 1955. See also *in re Delhi Laws Act*, 1912. S. C. R. 747.

1449. Delegated Legislation.

The essential legislative function which consist in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct can not be delegated: *Hari Shankar v. State of Madhya Pradesh*, 1955 1 S. C. R. 380. Similarly, the power to repeal and

CHAPTER XXXI

PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS

SYNOPSIS

- 1454. Letters of guarantee etc given to the rulers, no bar to abolish the Jagir
- 1455. Liabilities etc. after the formation of the Dominion of Pakistan, Indian Independence (Rights, Properties and Liabilities) order of 1947
- 1456. State is liable for the tortious acts of its servant
- 1457. Contracts by the Government
- 1458. Property going to State by escheat
- 1459. Trading and commerce etc within Indian territory

1454. Letters of guarantee etc. given to the rulers, no bar to abolish the Jagir

Law passed for abolishing jagirs cannot be challenged on the ground that by some provisions in the letters of guarantee obtained before the Constitution by the previous Rulers of the erstwhile Indian State a guarantee was given that their jagir would be kept intact. In this case the validity of the Bombay Merged Territories and Areas (Jagirs Abolition) Act (39 of 1954) was challenged. It was held that the State Legislature had power to enact such a law : *Umeg Singh v. State of Bombay*, A. I. R. 1955 S. C. 540 : 1955 S. C. J. 472 : 1955 S. C. A. 74.

The provisions of Bombay Personal Inams Abolition Act (42 of 1953) were also challenged on the ground that the Inam could not be taken away in as much as it was based on a Sanad. It was also contended that Article 249(h) of the Constitution of India did not warrant the passing of such a law. This contention was rejected. It was held that the Act is valid : *Ranghidas Varaydas v. Collector of Surat*, A. I. R. 1961 S. C. 291, A. I. R. 1961 (1) S. C. R. 951, A. I. R. 1961 S. C. J. 614.

The legislature is not prohibited from passing laws because of some agreement made by an ex-ruler. Thus it was held that Article 295 of the Constitution did not prohibit the Parliament from enacting laws which may effect some agreement or contract made between Ex-Rulers and some other individuals. In this particular case the Ruler of Jodhpur State had exempted excise duty and income tax by an arrangement entered into with the Company concerned. Subsequently an Act was passed by the competent Legislature, which imposed excise duty. The validity of the law by which excise duty was imposed was challenged. It was held to be valid : *Umaid Mills Ltd. v. Union of India* A. I. R. 1963 S. C. 953 ; 1963 (Supp) (2) ; S. C. R. 513 ; (1964) S. C. J. 699.

1455. Liabilities etc. after the formation of the Dominion of Pakistan, Indian Independence (Rights, Properties and Liabilities) order of 1947.

So far as the application of Indian Independence (Rights, Proper-

from the words of the Constitution or the Act as the case may be. But, "If however, two constructions, are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience and make well established provisions of existing law nugatory *Chandra Mohan v State of U P*, A I R 1966 S. C 1987

CHAPTER XXXI

PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS

SYNOPSIS

- 1454. Letters of guarantee etc. given to the rulers, no bar to abolish the Jagir
- 1455. Liabilities etc. after the formation of the Dominion of Pakistan, Indian Independence (Rights, Properties and Liabilities) order of 1947
- 1456. State is liable for the tortious acts of its servant
- 1457. Contracts by the Government
- 1458. Property going to State by escheat
- 1459. Trading and commerce etc. within Indian territory

1454. Letters of guarantee etc. given to the rulers, no bar to abolish the Jagir

Law passed for abolishing jagirs cannot be challenged on the ground that by some provisions in the letters of guarantee obtained before the Constitution by the previous Rules of the Erstwhile Indian State a guarantee was given that their jagir would be kept intact. In this case the validity of the Bombay Merged Territories and Areas (Jagirs Abolition) Act (39 of 1954) was challenged. It was held that the State Legislature had power to enact such a law : *Umeg Singh v. State of Bombay*, A. I. R. 1955 S. C. 540 : 1955 S. C. J. 472 : 1955 S. C. A. 74.

The provisions of Bombay Personal Inams Abolition Act (42 of 1953) were also challenged on the ground that the Inam could not be taken away in as much as it was based on a Sanad. It was also contended that Article 249(h) of the Constitution of India did not warrant the passing of such a law. This contention was rejected. It was held that the Act is valid : *Ranglidas Varajidas v. Collector of Surat*, A. I. R. 1961 S. C. 291 ; A. I. R. 1961 (1) S. C. R. 951 ; A. I. R. 1961 S. C. J. 614.

The legislature is not prohibited from passing laws because of some agreement made by an ex-ruler. Thus it was held that Article 295 of the Constitution did not prohibit the Parliament from enacting laws which may effect some agreement or contract made between Ex-Rulers and some other individuals. In this particular case the Ruler of Jodhpur State had exempted excise duty and income tax by an arrangement entered into with the Company concerned. Subsequently an Act was passed by the competent Legislature, which imposed excise duty. The validity of the law, by which excise duty was imposed was challenged. It was held to be valid : *Umaid Mills Ltd. v. Union of India* A. I. R. 1963 S. C. 953 ; 1963 (Supp) (2) : S. C. R. 513 ; (1964) S. C. J. 699.

ies and Liabilities) order of 1947 is concerned, it was held that its Article 8(1) applies not only to executed contract but also to executory contracts. The test to determine whether a contract was exclusively for the purposes of the dominion of Pakistan was also explained by the Supreme Court. The correct test to apply for determining the true scope and effect of Article 8(1) is not whether the contract was for the purposes of the Dominion of Pakistan at the date when it was made. Exhypothesi that test is clearly inapplicable. All contracts contemplated by Article 8 must be contracts which when made were made by undivided India by the Governor-General in Council. The test that must be applied is an artificial test and the test may be either if the contract had been entered into on 15th August, 1947, whether it would have been a contract for the purposes of the Dominion of Pakistan, or if the Dominion of Pakistan had been in existence when the contract was entered into, whether it would have been a contract for the purposes of Pakistan: *Union of India v. M/s. Chaman Lal & Co.* A. I. R. 1957 S. C. 652; 1957 S. C. J. 719; A. I. R. 1957 S. C. 825.

While interpreting article 9 of the said order, it was held that the expression 'other financial obligations' is not confined only to claims for injunction or specific performance of contract or the like. This expression includes an obligation in the nature of an obligation; an obligation in respect of loans and guarantees. It was observed: "The phrase 'loans, guarantees and other financial obligations' occurred in Section 178 in Part VII of the Government of India Act 1935 and there cannot be any doubt that those expressions used in that section did not refer to all and sundry pecuniary obligations of the State arising out of contracts of every description. The loans and guarantees there referred to meant, it would seem, the special kinds of contracts relating to State loans and State guarantees. In that context "financial obligations" would mean obligations arising out of arrangement or agreements relating to State finance such as distribution of revenue, the obligation to grant financial assistance by the Union to any State or the obligation of a State to make contributions and the like. It is, however, not necessary or desirable to attempt an exhaustive definition of the expression "financial obligations". The Court will have to consider in each case whether a particular obligation which may be the subject matter of discussion falls within the expression "financial obligations" within the meaning of Article 9. Whatever liabilities may or may not come within that expression. The court observed "we are clearly of opinion, in agreement with the High Court that the liability to pay rent under a lease certainly does not come within that expression": *Surendra Singh v. State of Uttar Pradesh*, A. I. R. 1954 S. C. 194; 1954 S. C. J. 63; 378 (1954) S. C. R. 36.

So far as the scope of articles 10(2) and 12(2) of the said order are concerned, it was held that the words "liability in respect of an actionable wrong" according in article 10(2) cannot be understood in a restricted way in the sense of a liability for damages for completed tortious acts. In this case a suit had been filed by a ruler, challenging his liability to pay certain taxes. The question was whether the suit could proceed after the partition of the country. It was held that the suit already filed for injunction praying that the Bengal

Government should be restrained from proceeding with the illegal assessment, could proceed after the partition of the country under article 10 (2) of the said order *State of Tripura v East Bengal*, A I R 1951 S C 23, (1951) S C R 1, (1951) S C J 30

1456 State is liable for the tortious acts of its servant

There is no bar to the filing of a suit for damages against the State for the tortious acts committed by its servants. In this case the vehicle owned by the State for the use of the District Collector struck against a person who died as a result of the accident. The driver was bringing back the vehicle from the workshop after repairs. It was held that the State was responsible for the rash and negligent act of the driver. The scope of Article 300 the Constitution was discussed. *State of Rajasthan v Mt. Vidhyaval*, A I R 933, (1962) Supp(2) S S R. 989 (1962) S C R 136—(1263) I S C J 307

In case the tort committed by the servant is referable of the exercise of sovereign power, the State will not liable for damages. The trading activities must be distinguished from the sovereign activities. This view was expressed in *Kasturi Lal v State of U P*, A I R, 1965 S C 1039 (1965) 1 S C A 809, (1965) 2 SCJ 318

In this case a person from whom gold was illegally seized by the Police Officer who subsequently did away with it sued the Government for damages. It was held that the aggrieved person had no remedy against the State. *The State of Rajasthan v Smt. Vidhya Wale* referred to above was distinguished.

1457 Contracts by the Government

Article 299(1) contains provisions to safeguard the Government against unauthorised contracts. The contracts should be in proper form. However, if the contract is not made in the proper form, an innocent contracting party cannot be made to suffer. If there is no defect or objection, excepting to the forms of the contract, the Government may accept the responsibility. If the authority of the officer concerned is not challenged and he acts on behalf of the Government the contract will not become bad. The Government may not be bound by a contract made orally or through correspondence but the contract itself cannot be said to be void. *Chatturbhuj Vishaldas v Moreshwar Parashram* A I R. 1954 S C 236 (1954) S C R. 817, (1951) S C J 315, 1954 S C A. 373

This case arose out of an election petition. The contract was made by correspondence. The question was of the disqualification of the candidate. The question was again considered by the Supreme Court. Section 175(3)(4) of the Government of India Act 1935 which contains provisions were similar to those contained in article 299 (1) (2) of the Constitution of India was examined. It was held that provisions regarding the form of the contract made between a private person and the Government are mandatory. *Seth Bhikari Jaspura v Union of India* (1962) 2 S C R 810 (1962) A I R S. C 113, (1962) 2 S C J 479 (1962) 1 S C A 398. The case 1954 S S R. 813 referred to above was distinguished and discussed. See also *B Prasad v L Prasad* 1967 D.E.C. 64

The failure to comply with the mandatory provisions of section 175 (3) of the Government of India Act, 1935 was held to invalidate the contracts which must to be deemed bevoid. However, section 70 of the Contract Act may be applied in the case. *State of West Bengal v. V. K. Mondal and Sons*. A. I. R. 1962 S. C. 779 : (1962) 2 S. C. R. 375 ; *New Marine Cold Co. v. Union of India*, (1964) 2 S. C. R. 359 : (1964) 1 S. C. A. 421 : (1964) S. C. A. 152.

The case, (1962) 2 S. C. R. 880 referred to above was followed by the Supreme Court in *Karamshi v. State of Bombay*, (1964) 6 S. C. R. 984 : (1965) 2 S. C. A. 568 : AIR 1964 S. C. 1714. However, in *Union of India v. A. L. Rallia Ram*, A. I. R. 1968, S. C. 1685 ; (1964) 6 S. C. R. 164, it was held that the contract need not be embodied in a formal document unless there was a direction by the Governor General to do so. This was a case under section 175(3) of the Government of India Act, 1935. Tenders were invited for purchase of books on behalf of the Governor General of India and were accepted in writing, expressed to be made in the name of the Governor General. It was held that the terms of the contract were binding.

1458. Property going to State by escheat.

Under Article 296 of the Constitution of India, property which was to devolve by escheat or lapse or as *bona vacantia* for want of original owner to his Majesty or to the Ruler in question State will vest in the State or the Union of India as the case may be according to the place where the property is situated. In re *Mandals, Estate*, A.I.R. 1959 Cal. 439 ; See also : *Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay*, (1958) S. C. A. 254 (1958) S. C. R. 1122 : A. I. R. 1958 S. C. 328.

1459. Trading and commerce etc. within Indian territory.

The matters relating to Trade, Commerce and Intercourse within the Indian Territory are dealt with in chapter XII of the Constitution of India. Article 301 contains principles of paramount importance to the economic unity of the country and provides the main sustaining force for the stability and progress of the political and cultural unity of India. The legislative power is controlled by Article 301 also. The freedom of trade is guaranteed by Article 301. If the State law places restrictions on movement of goods and traffic, it may be declared void. Thus where a law imposes taxes on goods on the ground that these are carried by road or by inland waterways, the law will be declared void as putting restrictions on the freedom of trade etc. In this case the Assam Taxation (on Goods carried by Road or by Indian water ways) Act, was declared void after reversing the judgment given by the Assam High Court: *Atiabari Tea Co. Ltd. v. State of Assam*, A. I. R. 1963 S. C. 233 ; In *Automobile Transport Ltd. v. State of Rajasthan* A. I. R. 1962 S. C. 1406 ; (1963) 1 S. C. R. 491 ; (1962) 2 S. C. A. 35 it was held that the Rajasthan Motors Vehicles Taxation Act (11 of 1951) was valid and that the taxes imposed by it do not hinder the freedom of trade etc. as assured by Article 301 of the Constitution. The view given in *Atiabari Case* (Supra), was explained

ed in this judgment. It was held that the taxes imposed by the Rajasthan Act were compensatory and over-hired for the use of trading facilities. The scope of Article 301 in relation to 19(1)(f) has been considered by the Supreme Court in *Chamarbugwalla Case* (1957) S. C. R. 874.

CHAPTER XXXII

EMERGENCY PROVISIONS

SYNOPSIS

- 1460. Interpretation—Article 359—Only one interpretation possible
- 1461. Articles 358 and 359—Distinction
- 1462. Order under Article 359 lasts for a specified period whereas order under 358 last during emergency
- 1463. Presidential order during emergency does not enhance the power of President to legislate
- 1464. Article 359—"Any Court"—Covers all courts in India.
- 1465. Article 359—Scope—Applies to proceedings even under section 491 of the Code of Criminal Procedure
- 1466. Substance and not the form of proceeding is the decisive factor.
- 1467. Law challenged on the ground of violation of fundamental rights—Bar of Article 359 is applicable
- 1468. Order under Article 359 need not be universal
- 1469. Detention in violation of the Act bad—Can be challenged—Article 359—No bar
- 1470. Malafide—Court can be moved inspite of Article 359.
- 1471. Delegation, excessive—Plea of—Article 359—No Bar.
- 1472. Publishing a book of purely scientific nature cannot be banned

1460 Interpretation—Article 359—Only one interpretation possible

The question of approach becomes relevant and material only if it can be shown that a particular statute is reasonably capable of two alternative constructions. If the conclusion reached is that Article 359 is reasonably capable of only one construction and that is the construction which has been put on it by various High Courts, the question of approach does not arise : *Makhan Singh v. State of Punjab*, A.I.R. 1974 S.C. 381.

1461. Articles 358 and 359—Distinction.

In construing Article 359 it is relevant and useful to compare and contrast the provisions of Articles 358 and 359 and the Article should be interpreted in the light of the background supplied by the comparative examination of the respective provisions contained in Article 358 and 359 (1) and (2). It may be seen that Article 359, does not purport expressly to suspend any of the fundamental rights. It authorises the President to issue an order declaring that the right to move any court for the enforcement of such of the rights in Part III as may be mentioned in the order and all proceedings in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which proclamation is in force or for such shorter period as may be specified in the order. What the Presidential order purports to do by virtue of the power conferred on the President by Articles 359 (1) is to bar the citizens to move any court

for the enforcement of the specified rights. The rights are not expressly suspended, but the citizen is deprived of his rights to move any court for their enforcement. That is one important distinction between the provisions of Article 358 and Article 359: *Makhan Singh v. State of Punjab* A. I. R. 1964 S.C. 381.

1462. Order under Article 359 lasts for a specified period whereas order under 358 last during emergency.

The distinction that is present in Articles 358 and 359 lies in the fact that the suspension of Article 19 for which Article 358 provides, continues so long as the proclamation of Emergency is in operation, whereas the suspension of the right to move any court which the Presidential Order under Article 359 brings about can last either for the period of the proclamation or for a shorter period if so specified by the Order: *Makhan Singh v. State of Punjab* A. I. R. 1964 S.C. 391.

1463. Presidential order during emergency does not enhance the power of Parliament to legislate.

The Presidential Order cannot widen the authority of the legislatures or of the executive. It merely suspends the right to move any court to obtain a relief on the ground that the right conferred by Part III have been contravened if the said rights are specified in the Order. The inevitable consequence of this position is that as the Order ceases to be operative the infringement of the rights made either by the legislative enactment or by executive action can be challenged by a citizen in a court of law and the same may have to be tried on the merits on the basis that the rights alleged to have been infringed were in operation even during the pendency of Presidential Order. Parliament may after the expiry of the Presidential order pass any legislation to protect executive action taken during the pendency of the Presidential Order and afford indemnity to the executive: *Makhan Singh v. State of Punjab*, A. I. R. 1964 S.C. 391.

1464. Article 359—"Any Court"—Covers all courts in India.

In plain language the words "any court" cannot mean only the Supreme Court. They would necessarily cover all courts of competent jurisdiction. If the intention of the Constitution makers was to confine the operation of Article 359 (1) to the right to move only the Supreme Court, nothing could have been easier than to say so expressly instead of using the wider words "the right to move any court." *Makhan Singh v. State of Punjab*, A. I. R. 1964 S.C. 381.

1465. Article 359—Scope—Applies to proceedings even under section 491 of the Code of Criminal Procedure.

The proceedings taken under section 491 of Cr. P.C. are not of a distinctly separate character and they fall under Article 359. Under Section 491 as it stood before the date of the Constitution, it would have been open to the detenu to contend that the law under which he was detained was invalid because it was passed by a legislature without legislative competence. The validity of the law might also have been challenged on the ground that the operative provisions in the law suffered from the vice of excessive delegation. The detenu might also have urged that in detaining him the mandatory provisions under the detaining Act have been complied with. But before the Constitution was adopted, it was not open to the detenu to claim that the impugned law was invalid because it contravened his fundamental rights guaranteed by the relevant article of

the Constitution because the right to challenge the validity of a statute on the ground that it contravenes the fundamental rights of the citizens has accrued to the citizens only after and as a result of the provisions of the Constitution itself. If section 491 is treated as standing by itself and apart from the provisions of the Constitution the plea raised by the detenus that the Defence of India Act and Rules are *ultra vires* cannot be entertained in the proceedings taken under that section and it is only when the proceedings taken under the said section are dealt with not only in the light of Section 491 and of the rights which were available to the citizens before 1950 but when they are considered also in the light of the fundamental rights guaranteed by the Constitution that the relevant plea can be raised. Thus the content of the detenu's right to challenge the legality of his detention which was available to him under Section 491 (f) (b) prior to the Constitution has been enlarged by the fundamental rights guaranteed to the citizens by the Constitution and so whenever a detenu relies upon his fundamental rights even in support of his petition made under Section 491 (1)(b) he is really enforcing the said rights and in that sense the proceedings inevitably part-take of the character of proceedings taken by the detenu for enforcing these rights. It is for this reason the prohibition contained in Article 359 and the Presidential Order issued under it will apply as much to proceedings under Section 491 as to those under Article 226 and Article 32: *Makhan Singh v. State of Punjab*, A. I. R. 1964 S.C. 381.

1466. Substance and not the form of proceeding is the decisive factor.

In deciding whether Article 359 is applicable or not the substance of the matter should be taken into consideration and exaggerated importance should not be given to the form of the proceeding. If the form which the proceedings take is held to be decisive in the matter, it would lead to an irrational position that an application containing the requisite averments in support of a plea for the release of the detenu, would be thrown out by the High Court if in form it purports to be made under Article 226 whereas it would be entertained and may indeed succeed if it purports to be made under Section 491. This would mean that makers of Constitution intended that whenever an emergency arises and a Presidential Order is issued under Article 359 in regard to the fundamental rights guaranteed by Article 21 and 22 it would be necessary to pass another piece of legislation providing for an appropriate change or repeal of a part of the provision of Section 491 (1) (b) Cr. P. C. and since the legislature has through oversight omitted to pass the necessary Act in that behalf proceedings under Section 491 (1) (b) must be allowed to be continued free from the bar created by the Presidential Order. This was never the intention of Constitution makers whether or not the proceeding taken under Section 491 (f) (b) fall within the purview of the Presidential Order must depend upon the construction of Article 359. In dealing with this point one must look at the substance of the matter and not the form: *Makhan Singh v. State*, A.I.R., 1964 S.C. 381.

1476 Law challenged on the ground of violation of fundamental rights—Bar of Article 359 is applicable.

Before giving relief to the detenu who alleges that he has been illegally and improperly detained, if the High Court is required to consider the validity of the operative provisions of the impugned Act on the ground that they infringe the specified fundamental rights, the bar created by

Article 359 (f) and the Presidential Order must, inevitably step in even though the proceedings in form have been taken under Section 491 (f) (b) of the Criminal Procedure Code. Once it is shown that the proceedings under Section 491 (f) (b) cannot make a substantial head way unless the validity of the impugned law is examined on the ground of the contravention of the fundamental rights, it must follow that the bar created by the Presidential Order operates against them. The right to move any court which is taken away by Article 359 and the Presidential Order issued under it is intended to cover all relevant categories of jurisdictions of competent courts under which the said actions would otherwise normally have been entertained and tried. *Makhan Singh v. State of Punjab*, A.I.R. 1964 S.C. 381.

1468 Order under Article 359 need not be universal

The Order which the President is authorised to issue under Article 359 need not be an order of general application. Where the order does not apply to persons who have been detained under the provisions of the Preventive Detention Act 1950 and so limiting the application of the Order to persons who have been detained under the Defence of India Ordinance it cannot be said that the President has acted outside the powers conferred on him by Article 359. The power conferred on the President is wide enough to enable him to make an order applicable to all parts of the country and to all citizens and in respect of any of the rights conferred by part III. This wide power obviously includes the power to issue a limited order. What the order purports to do is to provide that all persons wherever they reside who have been detained under the Ordinance or the Act will be precluded from moving any Court for the enforcement of the rights specified in the order. It is wrong to say that the order contravenes or is otherwise inconsistent with the powers conferred on the President by Article 359: *Makhan Singh v. State of Punjab*, A. I. R. 1964 S. C. 381.

1469 Detention in violation of the Act—Bad—Can be challenged—Article 359—No bar

The right to move any Court which is suspended by Article 359(1) and the Presidential Order issued under it, is the right for the enforcement of such of the rights conferred by Part III as may be mentioned in the Order. If in challenging the validity of the detention order, the detenu is pleading any right outside the rights specified in the Order his right to move any Court in that behalf is not suspended because it is outside Article 359 and consequently outside the Presidential Order itself. Thus where a detenu has been detained in violation of the mandatory provisions of the Act, it is open to the detenu to contend that his detention is illegal for the reason that the mandatory provisions of the Act have been contravened. Such a plea being outside Article 359 the right of the detenu to move for his release on such a ground cannot be affected by the Presidential Order: *Makhan Singh v. State of Punjab* A. I. R. 1964 S. C. 381.

1470 *Malafide*—Court can be moved in spite of Article 359.

Where the detenu moves the Court for a writ of habeas corpus on the ground that his detention has been ordered *Malafide*, the Court will interfere because the *Malafide* exercise of a power is wholly outside the scope of the Act conferring the power and can always be successfully challenged. Though a mere allegation that the detention is *Malafide*

CHAPTER XXXIII

ELECTIONS

SYNOPSIS

1473. Election petition only remedy to challenge elections

1474. Election, meaning of

1473. Election petition only remedy to challenge election

Under Article 329 of the Constitution, the validity of law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Articles 327 and 328 of the Constitution of India cannot be called in question in any Court. Similarly, no election to the either House of Parliament or to the House or either House of a Legislature of a State can be called in question except by an election petition, presented to the authority appointed under the law made by the appropriate legislature. Thus it will be seen that no election to the Houses referred to above can be called in question except by an election petition presented to an Election Tribunal appointed under the Representation of the People Act, 1951. It is clear from Article 329 that the High Courts have got no jurisdiction to issue a writ or direction or order in regard to an election to a Legislature. Thus where the question to be decided is whether the nomination paper for election to the Legislative Assembly etc. was properly or improperly rejected by the Returning Officer, the High Court cannot entertain a writ petition challenging the Order of the Returning Officer. The law of election contemplates that there should not be two attacks on matters connected with election proceedings: *N. P. Ponnuswami v. Returning Officer, Namakkal*, A. I. R. 1952 S. C. 63. In this case, it was observed,—

“The question now arises whether the law of election in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded) and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court. It seems to me that under the election law the only significance which the rejection of a nomination paper has consists in the

fide would not be enough ; the detenu will have to prove the *Malafides* but if the *Malafides* are alleged [the detenu cannot be precluded from substantiating his plea on the ground of the bar created by Article 359 and the Presidential Order : *Makhan Singh v. State of Punjab*, A. I. R. 1964 S. C. 381.

1471. Delegation excessive—Plea of—Article 359—No Bar.

Where a detenu contends that the operative portion of the law under which he is detained suffers from the vice of excessive delegation and is, therefore, invalid, the plea thus raised by the detenu cannot be said to be barred by the Presidential Order, as it is not a plea which is connected with the fundamental rights specified in the said Order. It is a plea which is independent of the said rights and its validity can be examined : *Makhan Singh v. State of Punjab*, A. I., R. 1964 S. C. 381.

1472. Publishing of a book of purely scientific nature cannot be banned.

The detenu wrote a book of purely scientific interest. The Government was requested to publish the same but this request was declined by the Government on the ground that the detenu loses all his liberty when his right to speech is suspended during the pendency of emergency. The shelter was also taken of the Bombay Conditions of Detention Order 1957 and particularly of Rule 17(iii) of the order which relates to censorship of the letters of the security prisoners. It was argued that freedom to publish being a part of freedom of speech and expression therefore there exist no right to get the manuscript published. But as the liberty of the detenu was restricted by way of rule 30 of Defence of India Rules and Orders and publishing of a book of scientific interest has nothing to do with of State activity, the Government cannot refuse to get the same published: *State of Maharashtra v. Prabhakar Pandurany Saugri* Cr. P. 197/1965, decided on 6th of November, 1965 (Supreme Court).

Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin atleast earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when 'the conduct and management' of an election may be said to begin. Again, the question has to be considered in each case."

Where a statute creates a right and provides for the Constitution of a special Tribunal, for determining questions as to that right, then except so far otherwise expressly provided or necessarily implied, the Tribunal alone has got jurisdiction to determine those questions. Article 329 of the Constitution provides that an election cannot be called in question except by an election petition presented according to law, which is the Representation of the People Act, 1951. When a nomination paper is rejected, an election petition is competent. Sections 105 and 170 of the Representation of the People Act, 1951 or any other provision of that Act cannot by themselves in any way affect the jurisdiction of the High Court to issue writs under Article 226 of the Constitution, but this jurisdiction is taken away not by the Representation of the People Act, but by Article 329 itself. The word 'election' in Article 329 is not restricted to the result of election or to the actual counting of votes. The meaning of the term must be found on a consideration of the whole procedure whereby a person is elected to the Parliament or to a State Legislature in accordance with the provisions of the Representation of the People Act 1951. The election commences when a nomination paper is filed before the Returning Officer and comes to an end when the Returning Officer declares the result of election: *N. P. Ponnuswami v. Returning Officer*, A.I.R. 1952 S.C. 63.

fact that it can be used as a ground to call the election in question. Article 329 (b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be carried under the law to call the election in question, could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors if any, are rectified, there will be no meaning in enacting a provision like Article 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the Article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the Election Tribunal, which is to be an independent body, at the stage when the matter is brought up before it."

1474. 'Election', meaning of.

Under Article 329 of the Constitution, the bar created to the entertainment of disputes regarding election extends to the entire procedure to be gone through to return a candidate to the Legislature. The word 'election' has by long usage in connection with the process of election of proper representatives in democratic institution, acquired both a wide and narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. The term 'election' may be taken to embrace the whole procedure whereby an elected member is returned whether or not it is found necessary to take poll. The word 'election' has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression 'conduct of election' in Article 324 specifically points to the wide meaning and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329 (b). That the word 'election' bears this wide meaning whenever we talk of election in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases, dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury's Laws of England, 11 edn, Volume 12, under the heading "Commencement of, the Election"):

"Although the first formal step in every election is the issue of the writ, election is considered for some purpose to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent'.

of citizens, the Court would be inclined to review its earlier decision in the interests of the public good, he did not find considerations of substantial and compelling character to do so in that case. But after referring to the reasoning given in *Sankari Prasad's* case the learned Chief Justice observed,

"In our opinion, the expression "amendment of the Constitution" plainly and unambiguously means amendment of all the provisions of the Constitution."

Referring to Article 13(2) he restated the same reasoning found in the earlier decision and added that if it was the intention of the Constitution makers to save fundamental rights from the amending process they should have taken the precaution of making clear provision in that regard. In short, the majority speaking through Gajendragadkar, Chief Justice agreed that no case had been made out for reviewing the earlier decision and practically accepted the reasons given in the earlier decision. Hidayatullah J. speaking for himself, observed:

"But I make it clear that I must not be understood to have subscribed to the view that the word "law" in Article 13(2) does not control constitutional amendments. I reserve my opinion on that case for I apprehend that it depends on how wide is the word "law" in that Article."

After giving his reasons for doubting the correctness of the reasoning given in *Sankari Prasad's* (Supra), the learned Judge concluded thus:

"I would require stronger reasons than those given in *Shankari Prasad's* case to make me accept the view that Fundamental rights were not really fundamental but were intended to be within the powers of amendment in common with the other parts of the Constitution and without the concurrence of the State."

The learned Judge continued:

"The Constitution gives so many assurance in Part III that it would be difficult to think that they were the play things of a special majority."

Mudholkar J., was positive that the result of a legislative action of legislature could not be other than "law" and, therefore, it seemed to him that the fact that the legislation dealt with the amendment of a provision of the Constitution would not make its result any the less a "law". He further pointed out that Article 368 did not say that whenever Parliament made an amendment to the Constitution it assumed a different capacity from that of the Constituent body. He also brought out other defects in the line of reasoning adopted in *Shankari Prasad's* case. It will, therefore be seen that the correctness of the decision in *Sankari Prasad's* case was not questioned in *Sajjan Singh's* case. Though it was not questioned the learned Judges agreed with the view expressed there in but two learned Judges were inclined to take a different view. But, as that question was not raised, the minority agreed with conclusion arrived at by the majority on the question whether the Seventeenth Amendment Act was covered by the provision of the Constitution. The conflict between the Majority and the minority in *Sajjan Singh* case was resolved in the case of *I. C. Golak Nath* decided on 28-2-67 in writ petition No. 202 of 1960.

CHAPTER XXXIV

AMENDMENT

SYNOPSIS

1475. Shankri Prasad's case and Sujan Singh case, a review
1476. Fundamental rights enjoy transcendental position and are beyond the reach of Parliament
1477. Paramountcy of Fundamental Rights
1478. Amendment is a law made by Parliament subject to article 13.
1479. Amending process involves no political question
1480. Constituent Assembly can be called to amend Constitution.
1481. Amendments how made—Four methods
1482. Golak Nath's case, a review
1483. Propective over-ruling
1475. Shankri Prasad's case and Sujan Singh's case, a review

The question of the amendability of the fundamental rights was considered by the Supreme Court in two decisions, namely: *Sri Shankari Prasad Singh Deo v. Union of India and State of Bihar* 1952 S.C.R. 69 and in *Sujan Singh v. State of Rajasthan*, 1965 (1) S. C. R. 938. In the former the validity of the Constitution (First Amendment) Act, 1951, which inserted inter alia Article 31-A and 31-B in the Constitution, was questioned. That amendment was made under Article 368 of the Constitution by the Provisional Parliament. The Court held that Parliament had power to amend Part III of the Constitution. The court came to that conclusion on two grounds, namely (i) the word "Law" in Article 13 (2) was one made in exercise of constituent power and (ii) there were two articles Article 13(2) and 368 each of which are widely phrased and therefore, harmonious construction required that one should be so read as to be controlled and qualified by the other, and having regard to the circumstances mentioned in the judgment article 13 must be read subject to Article 368 and it does not include constitutional law and on that assumption an attempt was made to harmonise Article 13(2) and 368 of the Constitution.

The decision in *Sujan Singh case* (Supra) was given in the context of the question of the validity of the Constitution Seventeenth Amendment Act 1964. The questions which arose in that case was whether the amendment Act in so far it purported to take away or abridge the rights conferred by Part III of the Constitution fell within the prohibition of Article 13(2) and secondly whether Articles 31-A and 31-B sought to make changes in Article 132, 136 or 226 or in any of lists in the seventh schedule and therefore the requirements of the proviso to Article 368 had to be satisfied. Both the Chief Justice and Mudholkar, J.J. made it clear that the first contention was not raised before the Court, and the parties accepted the correctness of the decision in *Shankari Prasad's case* in that regard. Yet Gajendragadkar, Chief Justice speaking for the majority agreed with the reasons given in *Shankari Prasad case* on the first question and Hidayatullah and Mudholkar J.J. expressed the dissent from the said view. But all of them agreed, though for different reasons on the second question. Gajendragadkar, Chief Justice speaking for himself, Wanchoo and Raghubar Dayal J.J. rejected the contention that Article 368 did not confer power on the Parliament to take away the fundamental rights guaranteed by Part III. When a suggestion was made that the decision in the aforesaid case should be reconsidered and reviewed the learned Chief Justice though he conceded that in a case where a decision had a significant impact on the fundamental rights

It will be seen that fundamental rights are given a transcendental position under our Constitution and are kept beyond the reach of Parliament. At the same time Part III and IV constitute an integrated scheme forming a self contained code. The scheme is made so elastic that all the Directive Principles of State Policy can reasonably be enforced without taking away or abridging the fundamental rights. While recognizing the immutability of fundamental rights subject to social control, the Constitution itself provides for the suspension or the modification of fundamental rights under specific circumstances for instance Art. 33 empowers Parliament to modify the rights conferred by Part III in their application to the members of the Armed forces, Art. 34 enables it to impose restriction on the rights of the Armed forces. Art. 35 enables it to impose restriction on the rights conferred by the said part while martial law is in force in area, Art 35 confers the power on it to make laws with respect to any of the matters under Clause (3) of Art. 16. Article 32 of the Constitution of India makes the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by the said parts as guaranteed rights. Even during grave emergencies Art 353 only suspends the provisions of Art 19; and Art 359 enables the President by order to declare the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in that order to be suspended; that is to say even during emergency, only Art 19 is suspended temporarily and all other rights are untouched except those specifically suspended by the President. *I. C. Golak Nath's Case*, Writ Petition No. 202 of 1966 decided on 27 of February 1967.

1477. Paramountcy of Fundamental Rights.

The Supreme Court has noticed the paramountcy of the fundamental rights in many decisions. In *A. K. Gopalan v. State of Madras* 1957 S.C.R. 89 they are described as "paramount", in *State of Madras v. Smt. Champakam Dorairajan*, 1951 S.C.R. 525 as 'sacrosanct,' in *Pondit M.S.M. Sharma v. Shri Sri Krishna Sinha* 1959 Supp. SCR 525 as Rights reserved by the people'. In *Smt. Ujjam Krishna Bai v. State of Uttar Pradesh* 1963 S.C.R. 778 as "inalienable and inviolable" and in other cases as "transcendental". The majority considered them as the bedrock of their political existence and minorities regarded them as a guarantee for their way of life. The Constitution has given by its scheme a place of paramountcy to the fundamental freedom. In giving to themselves the Constitution the people have reserved the fundamental freedoms to themselves. Article 13 merely incorporates that reservation. That article is however not the source of the protection of the fundamental rights but the expression of the reservation: The importance attached to the fundamental freedom is so transcendental that a bill enacted by a unanimous vote of all the members of both the Houses is in effective to derogate from its guaranteed exercise. It is not what the Parliament regards at a given moment as conducive to the Public benefit, but what Part III declares protected, which determines the ambit of the freedom. The incapacity of the Parliament therefore in exercise of its amending power to modify restrict or impair fundamental freedoms in Part III arises from the scheme of the Constitution and the nature of the freedoms: *I. C. Golak Nath's Case*, W.P. No. 202 of 1966 decided 27th of February, 1967.

1478. Amendment is a law made by Parliament subject to article 13. The marginal note to Article 368 describes that article as one prescribing

1476 Fundamental rights enjoy transcendental position and are beyond the reach of Parliament.

The objective sought to be achieved by the Constitution is declared in honourous terms in its preamble which reads :

"We the people of India have solemnly resolved to constitute India into a sovereign Democratic Republic and to secure to all its citizens justice, liberty, equality and fraternity."

It contains in a nutshell, its ideas and its aspirations. The preamble is not a platitude but the mode of its realisation is worked out in detail in the Constitution. The Constitution brings into existence different constitutional entities, namely, the Union, the States and the Union Territories. It creates three major instruments of power namely the legislature, the executive and the judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function within the spheres allotted to them. Some powers overlap and some are superseded during emergencies. The mode of resolution of conflicts and conditions for supersession are also prescribed. In short the scope of the power and the manner of its exercise are regulated by law. No authority created under the Constitution is Supreme; the Constitution is Supreme and all the authorities function under the Supreme law of the land. The rule of law under the Constitution has a glorious content. It embodies the modern concept of law evolved over the centuries. It empowers the Legislatures to make laws in respect of matters enumerated in the 3 lists annexed to Schedule V.I. In part IV of the Constitution, the Directive Principles of State Policy are laid down. It enjoins it to bring about a social order in which justice, social, economic and political shall inform all the institutions of national life.

It directs it to work for an egalitarian society where there is no concentration of wealth, where there is plenty and where there is social justice.

It therefore preserves the natural rights against the State encroachment and constitutes the higher judiciary of the State as the sentinel of the said rights and the balancing wheel between the rights, subject to social control. In short, the fundamental rights, subject to social control, have been incorporated in the rule of law. That is brought about by interesting process. In the implementation of the Directive Principles Parliament or the Legislature of a State makes laws in respect of matter or matters allotted to it. But the higher Judiciary tests their validity on certain objective criteria namely (i) to make the law; (ii) whether the said law infringes any of the fundamental rights; (iii) even it infringes the freedoms under Article 19, whether the infringement only amounts to "reasonable restriction," on such rights in "public interest". By this process of scrutiny, the Court maintains the validity of only such laws as keep a just balance between rights in Article 19 and the laws of social control.

The standard is an elastic one, it varies with time, space and conditions. What is reasonable under circumstances may not be so under different circumstances. The constitutional philosophy of law is reflected in parts III and IV of the Constitution. The rule of law under the Constitution serves the needs of the people without unduly infringing their rights. It recognizes the social reality and tries to adjust itself to it from time to time functions under the Constitution must accept it; otherwise it has no place under the Constitution.

itself gives the necessary clue to the problem. The amendment can be made by the introduction of a bill; it shall be passed by the two Houses; it shall receive the assent of the President. These are well known procedural steps in the process of law making. Indeed the Court in *Sankari Prasad's case* 1952 S. C. R. 39 brought out this idea in clear terms. It said "In the first place: it is provided that the amendment must be initiated by the introduction of a "bill in either House of Parliament " a familiar feature of Parliamentary procedure (of Article 107 (1) which says "A" bill may originate in either House." of Parliament. Then the bill must be "passed in Second House." Just what Parliament does when it is called upon to exercise its normal legislative function (Article 106 (2) and finally, the bill thus passed must be presented to the President", for his "assent", again a parliamentary process through which every bill must pass before it can reach the statute-book, (Article 111. Each of the component units of Parliament is to play its allotted part in bringing about an amendment to the Constitution. *I. C. Golak Nath's Case* writ petition No. 202 of 1966 decided on 26-2-67.

1479. Amending process involves no political question

It is wrong to say that the amending process involves political questions which are outside the scope of judicial review. When a matter comes before the court, its jurisdiction does not depend upon the nature of the question raised but on the question whether the said matter is expressly or by necessary implication excluded from its jurisdiction. Secondly, it is not possible to define what is a political question and what is not. The character of a question depends upon the circumstances and the nature of a political society. To put it differently the court does not decide any political question but only ascertains whether, Parliament is acting within the scope of the amending power. It may be that Parliament seeks to amend the Constitution for political reasons but the court in denying that power will not be deciding on political questions, but will only be holding that Parliament has no power to amend particular articles of the Constitution for any purpose whatsoever, be it political or otherwise. *I. C. Golak Nath's Case Supra*.

1480. Constituent Assembly can be called to amend Constitution.

If a contingency arises the residuary power of the Parliament may be relied upon to call for a Constituent Assembly for making a new Constitution or for radically changing it. The recent Act providing for a poll in Goa Daman and Diu is an instance of analogous exercise of such residuary power by the Parliament : *I. C. Golak Nath's Case*.

1481. Amendments How made—Four methods.

Broadly speaking amendments can be made by four methods : (i) by ordinary legislative process with or without restrictions (ii) by the people through referendum (iii) by majority of all the units of a federal state ; and (iv) by a special convention. The first method can be in four different ways, namely (i) by the ordinary course of Legislation by absolute majority or by special majority (See section 92(1) of the British North America Act subsection 152 South African Act, where under except sections 39, 137 and 152, other provisions could be amended by ordinary legislative process by absolute majority. Many Constitutions provide for special majorities). (ii) by a fixed quorum of members for the passage ; (see the defunct Constitution of Rumania), (iii) by dissolution and general election on a particular

various procedural steps in the matter of amendment, it shall be initiated by the introduction of a bill in either House of Parliament; it shall be passed by the prescribed majority in both the Houses; it shall then be presented to the President for his assent; and upon such assent the Constitution shall stand amended. The article assumes the power to amend found elsewhere and says that it shall be exercised in the manner laid down therein. When ever the Constitution sought to confer a special power to amend on any authority it expressly said so: (See Article 4 and 392). The contention that the power shall be implied either from Article 368 or from the nature of the Article sought to be amended was not accepted for the simple reason that the doctrine of necessary implication cannot be invoked if there is an express provision or unless but for such implication the article will become otiose or nugatory. There is no necessity to imply such power as Parliament has the picanary power to make any law, including the law to amend the Constitution subject to the limitation laid down therein.

Under Article 245, "subject to provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India". Article 246 demarcates the matters in respect of which Parliament and State Legislature may make law. In the field reserved for Parliament there is Entry 97 which empowers it to make laws in respect of "any other matter not enumerated in lists II and III including any tax not mentioned in either of those lists.". Article 248 expressly States that Parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent list or state List. It is, therefore, clear that the residuary power of Legislation is vested in Parliament. Subject to the argument based upon the alleged nature of the amending power as understood by jurists in other countries, it cannot be contended and indeed that the Constituent Assembly, if it so minded, could have conferred an express legislative power on Parliament to amend the Constitution by ordinary legislative process. Whether in the field of a constitutional law or statutory law amendment can be brought about only by Law.

Article 3 enables Parliament by law to form new States and alter areas, boundaries or the names of existing States. The proviso to that article imposed two further conditions, namely (i) in the circumstances mentioned therein, and the views expressed by the Legislatures. Not with standing the said condition it cannot be suggested that the expression "law" under the said Article is not one made by the Legislative process. Under Article 4 such a law can contain provisions for amendment of Schedules I and IV indicating there by that amendments are only made by legislative process. What is more Cl. (2) there of introduces a fiction to the effect that such a law shall not be deemed to be an amendment to the Constitution. This shows that the amendment is law and that but for the fiction it would be an amendment within the meaning of Art 368. *J.C. Golak Nath's case* writ petition No 202 of 1966 decided on 26 - 2 - 67.

There is internal evidence in the Constitution itself which indicates that amendment to the Constitution is a "law" within the meaning of Article 245. Now what is "Law" under the Constitution? In its comprehensive sense it includes constitutional law and the law amending the Constitution in constitutional law. Art. 13 (2) for the purpose of that article gives an inclusive definition. It does not exclude Constitutional law. It prime facie takes in Constitutional law. Article 368

fundamental rights. But on the basis of earlier decisions of this Court they were valid.

- (4) On the application of the doctrine of prospective over-ruling, as explained by us earlier, our decision will have only prospective operation and, therefore, the said amendments will continue to be valid.
- (5) We declare that the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein.
- (6) As the Constitution (Seventeenth Amendment) Act holds the field the validity of the two impugned Acts namely, the Punjab Security of Land Tenures Act of 1953 and the Mysore Land Reforms Act of 1962 as amended by Act XIV of 1965 cannot be questioned on the ground that they offend Article 13, 14 or 31 of the Constitution :

1483. Prospective over ruling.

There are two doctrines familiar to American Jurisprudence, one is described as Blackstonian theory and the other as, "prospective over ruling" Black stone in his Commentaries, (15th ed. 1809) stated the common law rule that the duty of the Court was not to pronounce a new rule but to maintain or expand the old one." It means the judge does not make law but only discovers or find the true law. The law has always been the same. If a subsequent decision changes the earlier one, the latter decision does not make law but only discovers the correct principle of law. The result of this view is that it is necessarily retrospective in operation. But jurists, George F. Canfield, Robert Freemar; John Henry Wigmore and Cardozo have expounded the doctrine of prospective over ruling and suggested it as 'a useful judicial tool.'

The Supreme Court of the United States of America in the year 1932, after Cardozo became an Associate Justice of that Court in *Great Northern Railway v. Sunburst oil and Ref. Co.*, 1932 (237) U. S. 358, 366 applied the said doctrine to the facts of that case. In that case the Montana Court had adhered to its previous construction of statute in question but had announced that interpretation would not be followed in the future. It was contended before the Supreme Court of the United States of America that a decision of a court over-ruling retroactive operation violated the due process clause in 14th Amendment.

The opinion of Cardozo J. tried to harmonize the doctrine of prospective over-ruling with that of stare decisis.

In 1940, Hughes, C. J. in *Court country Drainage District v. Baxter State Bank* 940 U. S. 37 stated thus :

"The law prior to the determination of unconstitutionality is an operative fact and may have consequences which cannot justly be ignored"

The doctrine of prospective over-ruling can be invoked only in matter arising under the Constitution ; it can be applied only by the Highest court of the country, the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

issue ; (see the Constitution of Belgium, Holland, Denmark and Norway), and (iv) by a majority of two Houses of Parliament in joint session as in the Constitution of the South Africa. The second method demands a popular vote referendum or plebiscite as in Switzerland, Australia, Ireland, Italy, France and Denmark. The third method is by an agreement in some form or other of either of the majority or of all the federating units as in Switzerland, Australia and the United States of America. The fourth method is generally by creation of a special body adhoc for the purpose of constitution revisions as in Latin America. Lastly, some constitutions imposes express limitation on the power to amend See Article 5 of the United States Constitution and the Constitution of the Fourth French Republic). It will therefore be seen that the power to amend and the procedure to amend basically differ from State to State : it is left to the Constitution-maker to prescribe the scope of the power and the method of amendment having regard to the requirements of the particular State. There is no article in any of the Constitution similar to article 13(2) of Constitution. India adopted a different system altogether, it empowered the Parliament to amend the Constitution by the Legislative process subject to fundamental rights. The Indian Constitution has made the amending process comparatively flexible but it made it subject to fundamental rights.

1482. Golak Nath's case, a review.

The court in the case arrived at two conclusions, namely (i) the Parliament has no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights and (2) the case is a fit case to invoke and apply the doctrine of prospective over-ruling. In this case a challenge was made to the constitutionality of the 17th Amendment. Having regard to the history of the 17th amendments, their impact on the social and economic affairs of our country and the chaotic situation that may be brought about by the sudden withdrawal the court observed "we think that that considerable judicial restraints called for. We therefore, declare that our decision will not affect the validity of the Constitution (Seventeenth Amendment) Act 1964, or other amendments made to the Constitution taking away or abridging the fundamental rights. We further declare that in future the Parliament will have no power to amend Part III of the Constitution so as to take away or abridge that fundamental rights. In the case we do not propose to express our opinion on the question of the scope of the amendability of the provisions of Constitution other than the fundamental rights as it does not arise for consideration before us. Nor are we called upon to express our opinion on the question regarding the scope of the amendability of Part III of the Constitution otherwise than by taking away or abridging the fundamental rights.

The Court summarised its decision thus :

- (1) The power of the Parliament to amend the Constitution is derived from Articles 245, 246 and 248 of the Constitution and not from Article 363 thereof which only deals with procedure. Amendment is a legislative process.
- (2) Amendment is 'law' within the meaning of Article 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part III thereof it is void.
- (3) The Constitution (First amendment, Act 1951, Constitution (Seventeenth Amendment) Act 1964 abridge the scope of th

(Bare Text)

CONSTITUTION OF INDIA

In India there is no statutory prohibition against the court refusing to give retroactivity to the law declared by it. Indeed, the doctrine of res-judicata precludes any scope for retroactivity in respect of a subject matter that has been finally decided between the parties. Further, Indian court by interpretation reject retroactivity to statutory provisions though concluded in general terms on the ground that they affect vested rights.

Our Constitution does not expressly or by necessary implication speak against the doctrine of prospective over ruling. In deed, Article 32, 141 and 142 are couched in such wide and elastic terms as to enable the Court to formulate legal doctrines to meet the ends of justice. *I C Golak Nath's case* (Supra)

THE CONSTITUTION OF INDIA

PREAMBLE.

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE, social economic and political ;
LIBERTY of thought, expression, belief, faith and worship ;
EQUALITY of status and of opportunity ; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

PART I THE UNION AND ITS TERRITORY

1. Name and territory of the Union.—(1) India, that is Bharat, shall be a Union of States.

(2) The States and the territories thereof shall be as specified in the First Schedule.

(3) The territory of India shall comprise—

(a) the territories of the States ;

(b) the Union territories specified in the First Schedule ;
and

.. (c) such other territories as may be acquired.

2. Admission or establishment of new States.—Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

3. Formation of new States and alteration of areas, boundaries or names of existing States.—Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or part of States or by uniting any territory to a part of any State ;

(b) increase the area of any State ;

(c) diminish the area of any State ;

(d) alter the boundaries of any State ;

(e) alter the name of any State :

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

commencement of this Constitution in the form and manner prescribed by that Government :

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

7. Rights of citizenship of certain migrants to Pakistan.—Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India :

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

8. Rights of citizenship of certain persons of Indian origin residing outside India.—Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand parents was born in India as defined in the Government of India Act, 1935, (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.—No person shall be citizen of India by virtue of article 5, or be deemed to be citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

10. Continuance of the rights of citizenship.—Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

11. Parliament to regulate the right of citizenship by law.—Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

PART III FUNDAMENTAL RIGHTS

General

12. Definition.—In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Explanation I.—In this article, in clause (a) to (e), "State" includes a Union territory, but in the proviso, "State" does not include a Union territory.

Explanation II.—The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.

4. Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.—(1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

PART II CITIZENSHIP

5. Citizenship at the commencement of the Constitution.—At the commencement of this Constitution, every person who has his domicile in the territory of India and—

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be citizen of India.

6. Rights of citizenship of certain persons who have migrated to India from Pakistan.—Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
- (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the

a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

17. Abolition of Untouchability.—"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

18. Abolition of titles.—(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

Right to Freedom

19. Protection of certain rights regarding freedom of speech, etc.—

(1) All citizens shall have the right—

- (a) to freedom of speech and expression ;
- (b) to assemble peaceably and without arms ;
- (c) to form associations or unions ;
- (d) to move freely throughout the territory of India ;
- (e) to reside and settle in any part of the territory of India ;
- (f) to acquire, hold and dispose of property ; and
- (g) to practise any profession, or to carry on any occupation, trade or business ;

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from

13. Laws inconsistent with or in derogation of the fundamental rights.—(1) All laws in force in the territory of India immediately before the commencement of the Constitution in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of the clause shall, to the extent of the contravention, be void.

(3) In the article, unless the context otherwise require,—

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

Right to Equality

14. Equality before law.—The State shall not deny any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

16. Equality of opportunity in matters of Public employment.—

(1) There shall be equality of opportunity for all citizens in matter relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within

- (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

- (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provision of sub-clause (a) of clause (4).
- (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
- (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

Right against Exploitation

23. **Prohibition of traffic in human beings and forced labour.**—(1) Traffic in human beings and *begar* and any other similar forms of forced labour are prohibited and contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

24. **Prohibition of employment of children in factories, etc.**—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion

25. **Freedom of conscience and free profession, practice and propagation of religion.**—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

20. Protection in respect of conviction for offences.—(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

- (a) to any person who for the time being is an enemy alien; or
- (b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Right to Property

31. **Compulsory acquisition of property.**—(1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

- (a) The provisions of any existing law other than a law to which the provisions of clause (6) apply, or
- (b) the provisions of any law which the State may hereafter make
 - (i) for the purpose of imposing or levying any tax or penalty, or
 - (ii) for the promotion of public health or the prevention of danger to life or property, or
 - (iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provision of sub-section (2) of section 299 of the Government of India Act, 1935.

31A. Saving of laws providing for acquisition of estates, etc.—Notwithstanding anything contained in article 13, no law providing for—

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation 1.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.—Subject to public orders morality and health, every religious denomination or any section thereof shall have the right—

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Cultural and educational Rights

29. Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions

31B. Validation of certain Acts and Regulations.—Without prejudice to the generality of the provisions contained in article 31 A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any or the rights conferred by, any provisions of this Part, and notwithstanding any judgment decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

Right to Constitutional Remedies

32. Remedies for enforcement of rights conferred by this Part—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warrant* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

33. Power to Parliament to modify the rights conferred by this part in their application to forces.—Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

34. Restriction on rights conferred by this part while martial law is in force in any area.—Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

35. Legislation to give effect to the provisions of this part.—Notwithstanding anything in this Constitution,—

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part;

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the

- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or,
- (d) the extinguishment or modification of any rights of managing agents, secretaries and treasures, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
- (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence.

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31 :

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply, thereto unless such law, having been reserved for the consideration of the President, has received his assent.

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article.—

- (a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include,
 - (i) any *jagir*, *inam* or *maufi* or other similar grant and in the State of Madras and Kerala, any *Jaumam* right ;
 - (ii) any land held under ryotwari settlement ;
 - (iii) any land held or let for purposes of agricultural or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;
- (b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, *raiyat*, *under-raiyat* or other intermediary and any rights or privileges in respect of land revenue.

43. **Living wage, etc., for workers.**—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

44. **Uniform civil code for the citizens.**—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

45. **Provision for free and compulsory education for children**—The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

46. **Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.**—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

47. **Duty of the State to raise the level of nutrition and the standard of living and to improve public health.**—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48. **Organisation of agriculture and animal husbandry.**—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and other milch and draught cattle.

49. **Protection of monuments and places and objects of national importance.**—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

50. **Separation of judiciary from executive.**—The State shall take steps to separate the judiciary from the executive in the public services of the State.

51. **Promotion of international peace and security.**—The State shall endeavour to :—

- (a) promote international peace and security ;
- (b) maintain just and honourable relations between nations ;
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another ; and
- (d) encourage settlements of international disputes by arbitration ;

matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause . . .

- (ii) of that clause shall, subject to the the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.—In this article, the expression “law in force” has the same meaning as in article 372.

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

36. **Definition**—In this Part, unless the context otherwise requires “the State” has the same meaning as in Part III.

37. **Application of the principles contained in this Part**—The provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

38. **State to secure a social order for the promotion of welfare of the people.**—The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

39. **Certain principles of policy to be followed by the State.**—The State shall, in particular, direct its policy towards securing.—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood ;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment ;
- (d) that there is equal pay for equal work for both men and women ;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength ;
- (f) that childhood and youth are protected against exploitation and against moral and material abandonment,

40. **Organisation of village panchayats.**—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government,

41. **Right to work, to education and to public assistance in certain cases.**—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

42. **Provision for just and humane conditions of work and maternity relief.**—The State shall make provision for securing just and humane conditions of work and for maternity relief.

ferable vote and the voting at such election shall be by secret ballot.

Explanation.—In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

56. Term of office of President.—(1) The President shall hold office for a term of five years from the date on which he enters upon his office :—

Provided that—

- (a) the President may, by writing under his hand addressed to the Vice-President, resign his office ;
- (b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61 ;
- (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

57. Eligibility for re-election.—A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

58. Qualifications for election as President.—(1) No person shall be eligible for election as President unless he—

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

59. Conditions of President's office.—(1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowance and privileges as are specified in the Second Schedule.

(4) The emoluments and allowance of the President shall not be diminished during his term of office.

PART V

THE UNION

CHAPTER I.—THE EXECUTIVE

The President and Vice-President

52. The President of India.—There shall be a President of India.

53. Executive Power of the Union.—(1) The Executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

54. Election of President.—The President shall be elected by the members of an electoral college consisting of—

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States.

55. Manner of election of President.—(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:—

(a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred then the vote of each member referred to in sub-clause (a) shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single trans-

ferable vote; and the voting at such election shall be by secret ballot.

Explanation.—In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

56. Term of office of President.—(1) The President shall hold office for a term of five years from the date on which he enters upon his office:—

Provided that—

- (a) the President may, by writing under his hand addressed to the Vice-President, resign his office;
- (b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;
- (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

57. Eligibility for re-election.—A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

58. Qualifications for election as President.—(1) No person shall be eligible for election as President unless he—

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

59. Conditions of President's office.—(1) The president shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowance and privileges as are specified in the Second Schedule.

(4) The emoluments and allowance of the President shall not be diminished during his term of office.

60. Oath or affirmation by the President.—Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior most Judge of Supreme Court available, an oath or affirmation in the following form, that is to say—

swear in the name of God

“I, A. B., do _____
solemnly affirm
that I will faithfully execute the office of
President (or discharge the functions of the
President) of India and will to the best of
my ability preserve, protect and defend the
Constitution and the law and that I will de-
vote my self to the service and well-being
of the people of India.”

61. Procedure for impeachment of the President.—(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days notice in writing signed by not less than one fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-third of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained; such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.—

(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

63. The Vice-President of India.—There shall be a Vice-President of India.

64. The Vice-President to be ex-officio Chairman of the Council of States.—The Vice-President shall be ex-officio Chairman of the Council of

States and shall not hold any other office of profit :

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States under article 97.

65. The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.—(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter¹ to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) the Vice-President shall, during, and in respect of, the period¹ while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and he entitled to such emoluments, allowances and privileges as may be determined by parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

66. Election of Vice-President.—(1) The Vice-President shall be¹ elected by the member of an electoral college consisting of, the members of both Houses of Parliament in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

- (b) a Vice-President may be removed from his office by a resolution of the Council of States passed by the majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen day's notice has been given of the intention to move the resolution;
- (c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.

(1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

69. Oath or affirmation by the Vice-President.—Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say—

swear in the name of God
“I, A. B., do _____

solemnly affirm
that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.”

70. Discharge of President's functions in other contingencies.—Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

71. Matters relating to or connected with the election of a President or Vice-President.—(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.— (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

- (a) in all cases where the punishment or sentence is by a Court Martial;
- (b) in all cases where the punishment or sentence for an offence against any law relating to a matter to which the executive power of the Union extends;
- (c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (c) of clause (1) shall effect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by Governor of a State under any law for the time being in force.

73. Extent of executive power of the Union.— (1) Subject to the provisions of this Constitution the executive power of the Union shall extend—

- (a) to the matters with respect to which Parliament has power to make laws; and
- (b) to the exercise of rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement;

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Council of Ministers

74. Council of Ministers to aid and advise President.—(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.*

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

75. Other provisions as to Ministers.—(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

The Attorney-General for India

76. Attorney General for India.—(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

Conduct of Government Business

77. Conduct of business of the Government of India.—(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

78. Duties of Prime Minister as respects the furnishing of information to the President, etc.—It shall be the duty of the Prime Minister—

- (a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;
- (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- (c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been considered by the Council.

General

79. Constitution of Parliament.—There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

80. Composition of the Council of States.—(1) The Council of States shall consist of—

- (a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and
- (b) not more than two hundred and thirty eight representatives of the States and of the Union territories.

(2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matter as the following, namely :—

Literature, science, art and social service.

(4) The representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the Union territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

81. Composition of the House of the People.—(1) Subject to the provisions of article 331, the House of the People shall consist of—

- (a) not more than five hundred members chosen by direct election from territorial constituencies in the States, and
- (b) not more than twenty-five members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1),—

- (a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

82. Readjustment after each census.—Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine :

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House.

83. Duration of Houses of Parliament.—(1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in the accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the

expiration of the said period of five year shall operate as a dissolution of the House :

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

84. Qualification for membership of Parliament. A person shall not be qualified to be chosen to fill a seat in Parliament unless he:—

- (a) is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
- (b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

85. Sessions of Parliament, prorogation and dissolution. (1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—

- (a) prorogue the Houses or either House;
- (b) dissolve the House of the People

86. Right of President to address and send messages to Houses.

(1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

87. Special address by the President. (1) At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address.

88. Rights of Ministers and Attorney-General as respects Houses. Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

Officers of Parliament

89. The Chairman and Deputy Chairman of the Council of States. (1) The Vice-President of India shall be *ex-officio* Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof and, so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

90. Vacation and resignation of, and removal from, the office of Deputy Chairman. A member holding office as Deputy Chairman of the Council of States—

- (a) shall vacate his office if he ceases to be a member of the Council;
- (b) may at any time, by writing under his hand addressed to the Chairman, resign his office and
- (c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council :

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman. (1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, may be determined by the Council, shall act as Chairman.

92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration. (1) At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, the Deputy Chairman, is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings.

93. The Speaker and Deputy Speaker of the House of the People. The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker

thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

94. Vacation and resignation of and removal from, the offices of Speaker and Deputy Speaker. A member holding office as Speaker or Deputy Speaker of the House of the People—

- (a) shall vacate his office if he ceases to be a member of the House of the People;
- (b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and
- (c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House;

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days notice has been given of the intention to move the resolution :

Provided further that whenever the House of the People is dissolved the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.—(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or if no such person is present, such other person as may be determined by the House, shall act as Speaker.

96. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

97. Salaries and allowances of the Chairman and Deputy Chairman, and the Speaker and Deputy Speaker.—There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and to the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until

provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

98. Secretariat of Parliament.—(1) Each House of Parliament shall have a separate secretarial staff :

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

99. Oath or affirmation by members.—Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.—(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one tenth of the total number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

Disqualification of Members

101. Vacation of seats.—(1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of a House

of the Legislature of a State, and if a person is chosen a member both of Parliament and of a House of the Legislature of a State, then at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament —

(a) becomes subject to any of the disqualifications mentioned in clause (1) of article 102, or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker as the case may be,

his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant ;

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

102. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder ;

(b) if he is of unsound mind and stands so declared by a competent Court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

103. Decision on questions as to disqualifications of members.—(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

104. Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.—If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 99, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes

to a penalty of a five hundred rupees to be recovered as a debt due to the Union.

Powers, Privileges and immunities of Parliament and its Members

105. Powers, privileges, etc., of the House of Parliament and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

106. Salaries and allowances of members.—Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India.

Legislative Procedure

107. Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and others financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the House of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall subject to the Provisions of article 108, lapse on a dissolution of the House of the People.

108. Joint sitting of both Houses in certain cases.—(1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House ; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill ; or

- (c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it.

the President may unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill.

Provided that nothing in this clause shall apply to a money Bill.

(2) In reckoning any such period of a six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purposes specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses.

Provided that at a joint sitting—

(a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill ;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed ;

and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the House to meet therein.

109. Special procedure in respect of money Bills.—(1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendation of the Council of States.

(3) If the House of the People accepts any of the recommendation of the Council of States, the Money Bill shall be deemed to have been passed

by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of the States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

110. Definition of "Money Bills".—(1) For the purposes of this Chapter, a Bill shall be deemed to be money bill if it contains only provisions dealing with all or any of the following matters, namely :—

- (a) the imposition, abolition, remission, alteration or regulation of any tax ;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India ;
- (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund ;
- (d) the appropriation of moneys out of the Consolidated Fund of India ;
- (e) the declaring of any expenditure to be expenditure charged on the consolidated Fund of India or the increasing of the amount of any such expenditure ;
- (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State ; or
- (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

111. Assent to Bills.—When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assent to the bill or that he withholds assent therefrom :

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

Procedure in Financial Matters

112. Annual financial statement.—(1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India, and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India:—

(a) the emoluments and allowances of the President and other expenditure relating to his office;

(b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court.

(ii) the pensions payable to or in respect of Judges of the Federal Court,

(iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in a Governor's Province of the Dominion of India;

(e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India;

(f) any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal;

(g) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

113. procedure in Parliament with respect to estimates.—(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

114. Appropriation Bills.—(1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

- (a) the grants so made by the House of the People; and
- (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or the altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of article 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

115. Supplementary, additional or excess grants.—(1) The President shall—

- (a) if the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or
- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year;

cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

(2) The provisions of articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure of the grant in respect of such demand as they have effect in relation to the annual financial

statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.

116 Votes on account, votes of credit and exceptional grants.—(1) Notwithstanding anything in the foregoing provisions of this Chapter, the House of the People shall have power —

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure ;
- (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement ;

(c) to make an exceptional grant which forms no part of the current service of any financial year ;
and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which said grants are made.

(2) The provisions of articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.

117. Special provisions as to financial Bills —(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States :

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either Houses of Parliament unless the President has recommended to that House the consideration of the Bill.

Procedure Generally

118. Rules of Procedure.—(1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause 1, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3), shall preside.

119. Regulation by law of procedure in Parliament in relation to financial business.—Parliament may, for the purpose of the timely completion of financial business regulate by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and, if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under clause (1) of article 118 or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.

120. Language to be used in Parliament.—(1) Notwithstanding anything in Part XVIII, but subject to the provisions of article 348, business in Parliament shall be transacted in Hindi or in English.

Provided that the Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

121. Restriction on discussion in Parliament.—No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge, as hereinafter provided.

122. Court to inquire into proceedings of Parliament.—(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

- (a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and
- (b) may be withdrawn at any time by the President.

Explanation.—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

CHAPTER IV.—THE UNION JUDICIARY

124. Establishment and constitution of Supreme Court.—(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that—

- (a) a Judge may, by writing under his hand addressed to the President, resign his office;
- (b) a Judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

- (a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or
- (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
- (c) is in the opinion of the President, a distinguished jurist.

Explanation I.—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

125. Salaries, etc., of Judges.—(1) There shall be paid to the Judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

126. Appointment of acting Chief Justice.—When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

127. Appointment of *ad hoc* Judges.—(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President, and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has, been so designated in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

128. Attendance of retired Judges at sittings of the Supreme Court.—Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be a Judge of that Court.

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

129. Supreme Court to be a Court of record.—The Supreme Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself.

130. Seat of Supreme Court.—The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

131. Original jurisdiction of the Supreme Court.—Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute—

- (a) between the Government of India and one or more States ; or
- (b) between the Government of India and any State or States on one side and one or more other States on the other ; or
- (c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *Sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

132. Appellate jurisdiction of Supreme Court in appeals from High Court in certain cases.—(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where the High Court has refused to give such a certificate the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court, on any other ground.

Explanation.—For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matter.—(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

- (a) that the amount or value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law ; or
- (b) that the judgment, decree or final order involves directly

or indirectly some claim or question respecting property of the like amount or value ; or

(c) that the case is a fit one for appeal to the Supreme Court ; and, where the judgment, decree or final order appealed from affirms the decision of the Court immediately below in any case other than a case referred to in sub-clause (c). if the High Court further certifies that the appeal involves some substantial question of law.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

134. Appellate jurisdiction of Supreme Court in regard to criminal matters.—(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death ; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death ; or

(c) certifies that the case is a fit one for appeal to the Supreme Court ;

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.—Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respects to any matter to which the provisions of article 133 or article 134 do not apply if jurisdictions and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

136. Special leave to appeal by the Supreme Court.—(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

137. Review of judgment or orders by the Supreme Court.—Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

138. Enlargement of the jurisdiction of the Supreme Court.—(1) The Supreme Court shall have such further jurisdiction and powers with

respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

139. Conferment on the Supreme Court of power to issue certain writs—Parliament may by law confer on the Supreme Court power to issue direction, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warrant* and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

140. Ancillary powers of Supreme Court.—Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

141. Law declared by Supreme Court to be binding on all courts. The law declared by the Supreme Court shall be binding on all courts within the territory of India.

142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

143. Power of President to consult Supreme Court.—(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131 refer a dispute of the kind mentioned in the said provision to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit report to the President its opinion thereon.

144. Civil and judicial authorities to act in aid of the Supreme Court.—All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

145. Rule of Court etc.—(1) Subject of the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

(a) rules as to the persons practising before the Court;—

(b) rules as to the procedure for hearing appeals and other matters.

pertaining to appeals including the time within which appeal to the Court are to be entered ;

- (c) rules as to the proceeding in the Court for the enforcement of any of the rights conferred by Part III;
- (d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134 ;
- (e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which application to the Court for such review are to be entered ;
- (f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceeding therein ;
- (g) rules as to the granting of bail ;
- (h) rules as to stay of proceedings ;
- (i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay ;
- (j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Court.

(3) The minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five :

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

146. Officers and servants and the expenses of the Supreme Court.—(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct :

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to an office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave of pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

147. Interpretation.—In this Chapter and in Chapter V of part VI references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

CHAPTER X.—COMPTROLLER AND AUDITOR-GENERAL OF INDIA

148. Comptroller and Auditor-General of India.—(1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

(2) Every person appointed to be the Comptroller and Auditor-General of India shall before he enters upon his office make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the second Schedule.

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment;

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General.

(6) The administrative expenses of the office of the Comptroller and Auditor General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

149. **Duties and powers of the Comptroller and Auditor-General.**—The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the State and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

150. **Power of Comptroller and Auditor-General to give directions as to accounts.**—The accounts of the Union and of the States shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.

151. **Audit reports.**—(1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

PART VI

THE STATES

CHAPTER I.—GENERAL

152. **Definition.**—In this Part, unless the context otherwise requires, the expression "State" does not include the State of Jammu and Kashmir.

CHAPTER II.—EXECUTIVE

The Governor

153. **Governors of States.**—There shall be a Governor for each State:

Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.

154. **Executive power of States.**—The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

155. **Appointment of Governor.**—The Governor of a State shall be appointed by the President by warrant under his hand and seal.

156. Term of office of Governor.—(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office :

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

157. Qualifications for appointment as Governor.—No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

158. Conditions of Governor's office.—(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(3-A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

159. Oath or affirmation by the Governor.—Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the seniormost Judge of that Court available, an oath or affirmation in the following form, that is to say—

swear in the name of God

"I, A. B., do—

solemnly affirm

that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of ————
(name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of ———— (name of the State).

160. Discharge of the functions of the Governor in certain contingencies.—The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

161. Power of Governor to grant pardons, etc. and to suspend remit or commute sentences in certain cases.—The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

162. Extent of Executive Power of State.—Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Council of Ministers

163. Council of Ministers to aid and advise Governor.—(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and Advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court.

164. Other provisions as to Ministers.—(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor :

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at expiration of that period cease to be a Minister.

(5) The salaries and allowances of Minister shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be specified in the Second Schedule.

The Advocate-General for the State

165. **Advocate-General for the State.**—(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

Conduct of Government Business

166. **Conduct of business of the Government of a State.**—(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

167. **Duties of Chief Minister as respects the furnishing of information to Governor etc.**— It shall be the duty of the Chief Minister of each State,—

- (a) to communicate to the Governor of the State all decision of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation,
- (b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for ; and
- (c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

CHAPTER 'II—THE STATE LEGISLATURE
General

168. **Constitution of Legislature in States.**—(1) For every state there shall be a Legislature which shall consist of the Governor, and

- (a) in the States of Andhra Pradesh, Bihar, Madhya Pradesh, Madras, Maharashtra, Mysore, Punjab, Uttar Pradesh, and West Bengal two Houses ;
- (b) in other States, one House

(2) where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

169. Abolition or creation of Legislative Councils of the States (1) Notwithstanding anything in article 163, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

170 Composition of the Legislative Assemblies.—(1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from the territorial constituencies in the State.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

Explanation.—In this clause, the expression "population" means the population as ascertained at the last pending census of which the relevant figures have been published.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine ;

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the existing Assembly.

171. Composition of the Legislative Councils.—(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of the State :

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify ;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university ;

- (c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;
- (d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
- (e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—
Literature, science, art, co-operative movement and social service.

172. Duration of State Legislatures.—(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

173. Qualification for membership of the State Legislature.—A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he:

- (a) is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
- (b) is, in the case of a seat in the Legislative Assembly, not less than twenty five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

174. Session of the State Legislature, prorogation and dissolution.—

- (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its sitting in the next session.
- (2) The Governor may from time to time—

- (a) prorogue the House or either House ;
- (b) dissolve the Legislative Assembly.

175. Right of Governor to address and send messages to the House or Houses.—(1) The Governor may address the Legislative Assembly or, in the case of State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

176. Special address by the Governor.—(1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in case of a State having a Legislative Council, both houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.

177. Rights of Ministers and Advocate-General as respects the Houses.—Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council both Houses and to speak in, and otherwise to take part in the proceedings, of any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of the State Legislature

178. The Speaker and Deputy Speaker of the Legislative Assembly.—Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.—A member holding office as Speaker or Deputy Speaker of an Assembly—

- (a) shall vacate his office if he ceases to be a member of the Assembly ;
- (b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office ; and
- (c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly ;

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

180. Power of the Deputy Speaker or other person to perform the duties of the office of or to act as, Speaker.—(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of a Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

181. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 183 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in article 149, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

182. The Chairman and Deputy Chairman of the Legislative Council.—The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

183. Vacation and resignation of, and removal from the offices of Chairman and Deputy Chairman.—A member holding office as Chairman or Deputy Chairman of a Legislative Council—

- (a) shall vacate his office if he ceases to be a member of the Council ;
- (b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office ; and
- (c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council ;

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

184. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.—(1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of Procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall as Chairman.

185. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.—(1) At any sitting of the Legislative Council, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 184 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in article 183, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

186. Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.—There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

187. Secretariat of State Legislature.—(1) The House or each House of the Legislature of a State shall have a separate secretarial staff;

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

188. Oath or affirmation by members.—Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his

seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

189. Voting in Houses, Power of Houses to act notwithstanding vacancies and quorum.—(1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceeding.

(3) Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

Disqualifications of Members

190. Vacation of seats.—(1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

No person shall be a member of the Legislatures of two or more States, specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

(3) If a member of a House of the Legislature of a State—

(a) becomes subject to any of the disqualifications mentioned in in clause (1) of article 191; or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be,

his seat shall thereupon become vacant.

(3) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

191. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State.—

- (a) if he holds any office of profit under the Government of India or the Government of any State specified in the first Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;
- (b) If he is of unsound mind and stands so declared by a competent court ;
- (c) if he is an undischarged insolvent ;
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State ;
- (e) if he is so disqualified by or under any law made by Parliament.

(2) For the purpose of this article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

192. Decision on question as to disqualifications of Members.—(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

193. Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.—If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

Powers, Privileges and Immunities of State Legislatures and their Members

194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined,

shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that legislature.

195. Salaries and allowances of members.—Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of corresponding Province.

Legislative Procedure

196. Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

(2) Subject to the Provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of State having a Legislative Council unless it has been agreed to by both Houses either without amendment or with such amendments only as are agreed to by both House.

(4) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(3) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

197. Restriction on powers of Legislative Council as to Bills other than money Bills.—(1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council ; or

(b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it ; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree.

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

- (a) the Bill is rejected by the Council ; or
- (b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it ; or
- (c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the Second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.

198. Special procedure in respect of Money Bills.—(1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendation, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendation of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council, for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

199. Definition of "Money Bills".—(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

- (a) the imposition, abolition, remission, alteration or regulation of any tax ;

- (d) the appropriation of moneys out of the Consolidated Fund of the State ;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure ;
- (f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or
- (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission; alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

200. Assent to Bills.—When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President :

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom :

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

201. Bills reserved for consideration.—When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom :

Provided that where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

202. Annual Financial Statements.—(1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State; and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of each State—

(a) The emoluments and allowances of the Governor and other expenditure relating to his office;

(b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) expenditure in respect of the salaries and allowances of Judges of any High Court;

(e) any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal;

(f) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.

203. Procedure in Legislature with respect to estimates.—(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

204. Appropriation Bills.—(1) As soon as may be after the grants under article 203 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet—

(a) the grants so made by the Assembly; and

(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.

205. Supplementary, additional or excess grants.—(1) The Governor shall

(a) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of articles 202, 203 and 204 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.

206. Votes on account, votes of credit and exceptional grants.—

(1) Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State shall have power—

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 203 for the voting of such grant and the passing of the law in accordance with the provisions of article 204 in relation to that expenditure ;
- (b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the ind-finite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement ;
- (c) to make an exceptional grant which forms no part of the current service of any financial year ;

and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes which the said grants are made.

(2) The provisions of articles 203 and 204 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

207. Special provisions as to financial Bills.—(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council.

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that house the consideration of the Bill.

Procedure Generally

208. Rules of procedure.—(1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of the procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding province shall have effect in relation to the Legislature of the State subject to such

modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

209. Regulation by law of procedure in the Legislature of the State in relation to financial business.—The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under clause (1) of article 208 or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail.

210. Language to be used in the Legislature.—(1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English.

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

(2) Unless the Legislature of the State by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

211. Restriction on discussion in the Legislature.—No discussion shall take place in the Legislature of the State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

212. Courts not to enquire into proceedings in the Legislature.—(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

CHAPTER IV.—LEGISLATIVE POWER OF THE GOVERNOR

213. Power of Governor to promulgate Ordinance during recess of Legislature.—(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require.

Provided that the Governor shall not, without instruction from the President, promulgate any such Ordinance.—

- (a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature ; or
 - (b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President ; or
 - (c) an Act of the Legislature of the State containing the same provision would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.
- (2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance—

- (a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any upon the passing of the resolution or, as the case may be on the resolution being agreed to by the Council ; and

- (b) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void :

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent list, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

CHAPTER V.—THE HIGH COURTS IN THE STATES

214. High Courts for States.—There shall be a High Court for each State.

215. High Courts to be courts of record.—Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

216. Constitution of High Courts.—Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint :

217. Appointment and conditions of the office of a Judge of a High court.—(1) Every Judge of a High Court shall be appointed by the Presi-

dent by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years.

Provided that—

- (a) a Judge may, by writing under his hand addressed to the President, resign his office ;
- (b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court ;
- (c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

- (a) has for at least ten years held a judicial office in the territory of India ; or
- (b) has for at least ten years been an advocate of a High Court or of two more such Courts in succession.

Explanation.—For the purpose of this clause—

- (a) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office after he became advocate ;
- (b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such Area, as the case may be.

(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.

218. *Application of certain provisions relating to Supreme Court to High Courts.*—The provisions of clause (4) and (5) of article 124 shall apply in relation to a High Courts as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

219. *Oath or affirmation by Judges of High Courts.*—Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the third Schedule.

220. *Restriction on practice after being a permanent Judge.*—No person who, after commencement of this Constitution, has held office as a

permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and other High Courts.

Explanation.—In this article, the expression "High Court" does not include a High Court for a State specified in Part B of the First Schedule as it existed before commencement of the Constitution (Seventh Amendment) Act, 1956.

221. Salaries, etc., of Judges.—(1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule :

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

222. Transfer of a Judge from one High Court to another.—(1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.

(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.

223. Appointment of acting Chief Justice.—When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

224. Appointment of additional and acting Judges.—(1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the High Court for such period not exceeding two years as he may specify.

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty-two years.

224 A. Appointment of retired Judge at sitting of High Courts.—Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court :

Provided that nothing in this article shall be deemed to require any

such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.

225. Jurisdiction of existing High Courts.—Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sitting of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution,

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warrant* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(1 A) The power conferred by clause (1) to issue directions, order or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(2) The power conferred on a High Court by clause (1) or clause (1A) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

227. Power of superintendence over all courts by the High Court.

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed forces.

228. Transfer of certain cases to High Court.—If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

- (a) either dispose of the case itself, or
- (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

229. Officers and servants and the expenses of High Courts.—(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct :

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule a person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court including all salaries allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

230. Extension of jurisdiction of High Courts to Union territories.—

(1) Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to a Union territory—

(a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction ; and

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

231. Establishment of a common High Court for two or more States.

(1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court,—

such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.

225. Jurisdiction of existing High Courts.—Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sitting of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(1A) The power conferred by clause (1) to issue directions, order or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(2) The power conferred on a High Court by clause (1) or clause (1A) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

227. Power of superintendence over all courts by the High Court.
(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

- (a) call for returns from such courts;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

235. Control over subordinate courts.—The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with conditions of his service prescribed under such law.

236. Interpretation.—In this Chapter—

- (a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate sessions judge, additional sessions judge and assistant sessions judge;
- (b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial post inferior to the post of district judge.

237. Application of the provisions of this chapter to certain class or classes of magistrates.—The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

Part VII.—The States in Part B of the First Schedule. Rep. by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Sch.

PART VIII

THE UNION TERRITORIES

239. Administration of Union territories.—(1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of adjoining Union territory and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

239A. Creation of Local Legislatures or Council of Ministers or both for certain Union territories.—(1) Parliament may by law create for any of the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Pondicherry—

- (a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

- (a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction ;
- (b) the reference in article 227 to the Governor shall in relation to any rules, forms or tables for subordinate courts be construed as a reference to the Governor of the State in which the subordinate courts are situate ; and
- (c) the reference in article 219 and 299 to the State shall be construed as a reference to the State in which the High Court has its principal seat :

Provided that if such principal seat is in a Union territory, the reference in article 219 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.

CHAPTER VI—SUBORDINATE COURTS

233. Appointment of district judges.—(1) Appointments of persons to be, and the posting and promotion of, district judges in any state shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

233A. Validation of appointments of, and judgments etc., delivered by, certain district judges.—Notwithstanding any judgment, decree or order of any court,—

- (a) (i) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and
- (ii) no posting, promotion or transfer of any such person as a district judge, made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in the accordance with the said provisions ;
- (b) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966 by, or before, any person appointed, posted, promoted or transferred as a district judge in any State otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions.

234. Recruitment of persons other than district judges to the judicial service.— Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the state in accordance with rules made by him in that behalf after consultation with the

PART X

THE SCHEDULED AND TRIBAL AREAS

244. Administration of Scheduled Areas and Tribal Areas.—(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam.

PART XI

RELATIONS BETWEEN THE UNION AND THE STATES

CHAPTER I.—LEGISLATIVE RELATIONS

Distribution of Legislative Powers

245. Extent of laws made by Parliament and by the Legislatures of States.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No laws made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.

246. Subject matter of laws made by Parliament and by the Legislatures of States.—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

247. Power of Parliament to provide for the establishment of certain additional courts.—Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

248. Residuary Powers of legislation.—(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

249. Power of Parliament to legislate with respect to a matter in the State List in the national interest.—(1) Notwithstanding anything in

(b) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

240. Power of President to make regulations for certain Union territories.—(1) The President may make regulations for the peace, progress and good Government of the Union territory of—

- (a) the Andaman and Nicobar Islands ;
- (b) the Laccadive, Minicoy and Amindivi Islands ;
- (c) Dadra and Nagar Haveli ;
- (d) Goa, Daman and Diu ;
- (e) Pondicherry :

Provided that when any body is created under article 293A to function as a Legislature for the Union territory of Goa, Daman and Diu or Pondicherry, the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature.

(2) any regulation so made may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory.

241. High Courts for Union territories.—(1) Parliament may by law constitute a High Court for a Union territory or declare any Court in any such territory to be a High Court for all or any of the purposes of this Constitution.

(2) The provisions of Chapter V of Part VI shall apply in relation to a every High Court referred to in clause (1) as they apply in relation to a High Court referred to in article 214 subject to such modifications or exceptions as Parliament may by law provide.

(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, in relation to any Union territory shall continue to exercise such jurisdiction in relation to that territory after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court for a State to, or from, any Union territory or part thereof.

242. Org. Rep. by the Constitution Seventh Amendment Act, 1956, s. 29 and Sch.

PART IX.—*The territories in Part D of the first Schedule and other territories not specified in that Schedule. Rep. by the Constitution Seventh Amendment Act, 1956, s. 29 and Sch.*

shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

• 253. **Legislation for giving effect to international agreements.**—Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

254. **Inconsistency between laws made by Parliament and laws made by the Legislatures of States.**—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

255. **Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.**—No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given—

- (a) where the recommendation required was that of the Governor, either by the Governor or by the President;
- (b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President ;
- (c) where the recommendation or previous sanction required was that of the President, by the President.

CHAPTER II.—ADMINISTRATIVE RELATIONS

General

256. **Obligation of States and the Union.**—The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein :

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.—(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period. *

251. Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.—Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said article power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.—(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed

tion to any matter to which the executive power of the State extends.

259. *Armed Forces in States in Part B of the First Schedule.* Rep. by the Constitution (Seventh Amendment) Act, 1956 s. 29 and Sch.

260. *Jurisdiction of the Union in relation to territories outside India*—The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

261. *Public acts, records and judicial proceedings.*—(1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

Disputes relating to Waters

262. *Adjudication of disputes relating to waters of inter-State rivers or river valleys.*—(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Co-ordination between States

263. *Provisions with respect to an inter-State Council.*—If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

- (a) inquiring into and advising upon disputes which may have arisen between States ;
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest ; or
- (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

PART XII

FINANCE PROPERTY CONTRACTS AND SUITS

General

264. *Interpretation.*—In this Part, "Finance Commission" means a Finance Commission constituted under article 280.

265. *Taxes not to be imposed save by authority of law.*—No tax shall be levied or collected except by authority of law.

257. Control of the Union over States in certain cases.—(1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance :

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

258. Power of the Union to confer powers, etc., on States in certain cases.—(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

258A. Power of the States to entrust functions to the Union.—Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in rela-

- (a) duties in respect of succession to property other than agricultural land ;
- (b) estate duty in respect of property other than agricultural land ;
- (c) terminal taxes on goods or passengers carried by railway, sea or air ;
- (d) taxes on railway fares and freights ;
- (e) taxes other than stamp duties on transactions in stock-exchange and futures markets ;
- (f) taxes on the sale or purchase of newspapers and on advertisements published therein ;
- (g) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

(2) The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Union territories shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

(3) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.

270. Taxes levied and collected by the Union and distributed between the Union and the States.—(1) Taxes on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds in any such tax, except in so far as those proceeds represent proceeds attributable to Union territories or to taxes payable in respect of Union emoluments, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed.

(3) For the purposes of clause (2), in each financial year such percentage as may be prescribed of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of Union emoluments shall be deemed to represent proceeds attributable to Union territories.

(4) In this article:—

- (a) "taxes on income" does not include a corporation tax ;
- (b) "prescribed" means—
 - (i) until a Finance Commission has been constituted, prescribed by the President by order, and
 - (ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission ;
- (c) "Union emoluments" includes all emoluments and pensions payable out of the Consolidated Fund of India in respect of

266. *Consolidated Funds and public accounts of India and of the States.*—(1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State."

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purpose and in the manner provided in this Constitution.

267. *Contingency Fund.*—(1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under article 115 or article 116.

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under article 205 or article 206.

Distribution of Revenues between the Union and the States

268. *Duties levied by the Union but collected and appropriated by the States.*—(1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

- (a) in the case where such duties are leviable within any Union territory, by the Government of India, and
- (b) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

269. *Taxes levied and collected by the Union but assigned to the States.*—(1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2), namely :—

Provided that there shall be paid out of the Consolidated Fund of India as grant-in-aid of the revenues of the State such Capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purposes of promoting the welfare of the Scheduled Tribe in the State or raising that level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State :

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

- (a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part A of the table appended to paragraph 20 of the Sixth Schedule ; and
- (b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purposes of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament.

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission,

276. Taxes on professions, trades, callings and employments.—(1)

Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum :

Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make

which income-tax is chargeable.

271. Surcharge on certain duties and taxes for purposes of the Union.—Notwithstanding anything in article 268 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

272. Taxes which are levied and collected by the Union and may be distributed between the Union and States.—Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the Consolidated Fund of India to the States to which the law imposing the duty extends sums equivalent to the whole or any part of the net proceeds of the duty, and those sums shall be distributed among those States in accordance with such principles of distribution as may be formulated by such law.

273. Grants in lieu of export duty on jute and jute products.—There shall be charged on the Consolidated Fund of India in each year as grants in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those State, such sums as may be prescribed.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution whichever is earlier.

(3) In this article, the expression "prescribed" has the same meaning as in article 270.

274. Prior recommendation of President required to Bills affecting taxation in which States are interested.—(1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article, the expression "tax or duty in which States are interested" means—

- (a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or
- (b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.

275. Grants from the Union to certain States.—(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States :

Provided that there shall be paid out of the Consolidated Fund of India as grant-in-aid of the revenues of the State such Capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purposes of promoting the welfare of the Scheduled Tribe in the State or raising that level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State :

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

- (a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part A of the table appended to paragraph 20 of the Sixth Schedule ; and
- (b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purposes of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament.

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission,

276. Taxes on professions, trades, callings and employments.—(1)

Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum :

Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make

laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

277. *Savin, s.*—Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

278. *Agreement with States in Part B of the First Schedule with regard to certain Financial matters. Rep. by the Constitution (Seventh Amendment) Act, 1956 s. 29 Sch.*

279. *Calculation of "net proceeds" etc.*—(1) In the foregoing provisions of this Chapter, "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

280. *Finance Commission.*—(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the distribution between the Union and the State of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds ;
- (b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India ;
- (c) any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

281. Recommendations of the Finance Commission.—The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Miscellaneous Financial Provisions

282. Expenditure defrayable by the Union or a State out of its revenues.—The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

283. Custody etc., of Consolidated Funds, Contingency Funds and money credited to the public accounts.—(1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of the State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made, by the Governor of the State.

284. Custody of suitors' deposits and other moneys received by public servants and courts.—All moneys received by or deposited with—

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be, or

(b) any court within the territory of India to the credit of any cause, matter, account or persons,

shall be paid into the public account of India or the public account of the State, as the case may be.

285. Exemption of property of the Union from State taxation.—(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

286. Restrictions as to imposition of tax on the sale or purchase of goods.—(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sales or purchase takes place—

(a) outside the State; or

(b) in the course of import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and condition in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

287. Exemption from taxes on electricity.—Save in so far as Parliament may by law otherwise provide, no law of a State shall impose or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is—

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government or;

(b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction maintenance or operation of any railway,

and any such law imposing, or authorising the imposition of a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government or any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

288. Exemption from taxation by State in respect of water or electricity in certain cases.—(1) Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation.—The expression "law of a State in force" in this clause shall include a law of a State passed or made before the commencement of

this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incident of such tax by means of rules by order to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.

289. Exemption of property and income of a State from Union taxation.—(1) The property and income of a State shall be exempt from Union taxation.

(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of State, or any operations connected therewith, or any property used or occupied for the purposes of such trade business, or any income accruing or arising in connection therewith.

(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of government.

290. Adjustment in respect of certain expenses and pensions.—Where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then, if—

- (a) in the case of a charge on the Consolidated Fund of India, the court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State; or
- (b) in the case of a charge on the Consolidated Fund of a State, the court or Commission serves any of the separate needs of the Union or another State, or the person has served wholly or in part in connection with the affair of the Union or another State,

there shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

290A. Annual payment to certain Devaswom Funds.—A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Madras every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin.

291. **Privy purse sums of rulers.**—Where under any covenant or agreement entered in to by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such state as privy purse—

- (a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and
- (b) the sums so paid to any Ruler shall be exempt from all taxes on income.

CHAPTER II.—BORROWING

292. **Borrowing by the Government of India.**—The executive power of the Union extends to borrowing upon the security of the consolidated Fund of India within such limits, if any, as may from time to time fixed by Parliament by law and to the giving of guarantees within such limits, if any as may be so fixed.

293. **Borrowing by States.**—(1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India

(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

CHAPTER III.—PROPERTY, CONTRACT, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS

294. **Succession to property, assets, rights, liabilities and obligations in certain cases.**—As from the commencement of this Constitution—

- (a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and
- (b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise shall be the rights, liabilities and obligations respectively of

the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

295. Succession in property, assets, rights, liabilities and obligations in other cases.—(1) As from the commencement of this Constitution—

- (a) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and
- (b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State:

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1).

296. Property accruing by escheat or lapse or as *bona vacantia*.—Subject as hereinafter provided, any property in the territory of India which if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union :

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or of a State, vest in the Union or in that State.

Explanation.—In this article, the expressions "Ruler" and "Indian State" have the same meanings as in article 363.

297. Things of value lying within territorial waters or continental shelf to vest in the Union.—All lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf of India shall vest in the Union and be held for the purposes of the Union.

298. Power to carry on trade, etc.—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose :

Provided that—

- (a) the said executive power of the Union shall in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State ; and
- (b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.

299. Contracts.—(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

300. Suits and Proceedings.—(1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution—

- (a) and legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings ; and
- (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

PART XIII

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

301. Freedom of trade, commerce and intercourse.—Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

302. Power of Parliament to impose restrictions on trade, commerce and intercourse.—Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another

or within any part of the territory of India as may be required in the public interest

303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.—(1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

304. Restrictions on trade, commerce and intercourse among States Notwithstanding anything in article 301 or article 303, the Legislatures of a State may by law—

(a) impose on goods imported from other State or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade commerce or intercourse with or within that State as may be required in the public interest ;

Provided that no Bill or amendment for the purpose of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

305. Saving of existing laws and laws providing for State monopolies.—Nothing in article 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of sub-clause (6) of article 19.

306. Power of certain States in Part B of the First Schedule to impose restrictions on trade and commerce. *Rep. by the Constitution (Seventh Amendment), Act 1956 s. 29 and Sch.*

307. Appointment of authority for carrying out the purposes of article 301 to 304.—Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of article 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary.

PART XIV

SERVICES UNDER THE UNION AND THE STATES

CHAPTER I.—SERVICES

308. Interpretation.—In this Part, unless the context otherwise requires, the expression “States” does not include the State of Jammu and Kashmir.

309. Recruitment and conditions of Service of persons serving the Union or a State.—Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State.

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

310. Tenure of office of persons serving the Union or a State.—(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, hold office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or State.—(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry :

Provided that this clause shall not apply—

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; or
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason

to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(2) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

312. All-India services.—(1) Notwithstanding anything in Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

313. Transitional provisions.—Until the provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist, after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of the Constitution.

314 Provision for protection of existing officers of certain services.—Except as otherwise expressly provided by this Constitution, every person who having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement.

CHAPTER II.—PUBLIC SERVICE COMMISSION

315. Public Service Commissions for the Union and for the States.

(1) Subject to the provision of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as *Joint Commission*) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

316. Appointment and term of office of members.—(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission by the Governor of the State;

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall until some person appointed under clause (1) to the vacant office has entered on the duties thereof or as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose.

2. A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier ;

Provided that—

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317.

3. A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

317. Removal and suspension of a member of a Public Service Commission.—(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of mis-behaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be—

- (a) is adjudged an insolvent ; or
- (b) engages during his term of office in any paid employment outside the duties of his office ; or
- (c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour.

318. Power to make regulations as to conditions of service of members and staff of the Commission.—In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may by regulations—

- (a) determine the number of members of the Commission and their conditions of service ; and
- (b) make provision with respect to the number of members of the staff of the Commission and their conditions of service ;

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members.—On ceasing to hold office—

- (a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State ;
- (b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any

- other employment either under the Government of India or under the Government of a State ;
- (c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State ;
- (d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

320. Functions of Public Service Commissions.—(1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the Services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

- (a) on all matters relating to method of recruitment to civil service and for civil posts ;
- (b) on the principles to be followed in making appointments to civil services and posts and making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers ;
- (c) on all disciplinary matters affecting a person serving under the Government of a State in a civil capacity, including memorials or petitions relating to such matters ;
- (d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State ;
- (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them :

Provided that the President as respect the all-India services and also as respect other services and posts in connection with the affairs of the Union

and the Governors, as respect other services and posts in connection with the affairs of a State, may make regulations specifying the matter in which either generally, or in any particulars class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respect the manner in which effect may be given to the provisions of article 335.

(5) All regulation made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

321. Power to extend functions of Public Service Commissions.—An act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission as respect the service of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

322. Expenses of Public Service Commissions.—The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members of staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

323. Reports of Public Service Commissions.—(1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respect the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to the State, and in either case the Governor, shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

PART XV ELECTIONS

324. Superintendence direction and control of elections to be vested in an Election Commission.—(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections

to the offices of President and Vice-President held under this Constitution, shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other election Commissioners shall subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

325. No person to be ineligible for inclusion in or to claim to be included in a special electoral roll on grounds of religion, race, caste or sex.—There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

327. Power of Parliament to make provision with respect to elections to Legislatures.—Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

328. Power of Legislature of a State to make provision with respect to elections to such Legislature.—Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral roll and all other matters necessary for securing the due constitution of such House or Houses.

329. Bar to interference by courts in electoral matters.—Notwithstanding anything in this Constitution—

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court ;
- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

PART XVI

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

331. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.—(1) Seats shall be reserved in the House of the People for—

- (a) the Schedule Castes ;
- (b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam; and
- (c) the Scheduled Tribes in the autonomous district of Assam.

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

331. Representation of the Anglo-Indian community in the House of the People.—Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality of Shillong.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.

333. Representation of the Anglo-Indian community in the Legislative Assemblies of the States.—Notwithstanding any thing in article 170, the Governor of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate.

334. Reservation of seats and special representation to cease after twenty years.—Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to—

- (a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and
- (b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination,

shall cease to have effect on the expiration of a period of twenty years from the commencement of the Constitution:

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

335. Claims of Scheduled Castes and Scheduled Tribes to services and posts.—The claims of the members of the Scheduled Castes and the Sched-

duled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

336. Special provision for Anglo-Indian community in certain services.—(1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years :

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

337. Special provision with respect to educational grants for the benefit of Anglo-Indian community.—During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the benefit to the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent, than those for the immediately preceding period of three years :

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease :

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent. of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

338. Special Officer for Scheduled Castes, Scheduled Tribes, etc.
(1) There shall be a Special Officer for the Scheduled Castes, and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, references to the Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.

332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality of Shillong.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.

333. Representation of the Anglo-Indian community in the Legislative Assemblies of the States.—Notwithstanding anything in article 170, the Governor of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate.

334. Reservation of seats and special representation to cease after twenty years.—Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to—

(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and

(b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination,

shall cease to have effect on the expiration of a period of twenty years from the commencement of the Constitution:

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

335. Claims of Scheduled Castes and Scheduled Tribes to services and posts.—The claims of the members of the Scheduled Castes and the Sched-

PART XVII OFFICIAL LANGUAGE

CHAPTER I.—LANGUAGE OF THE UNION

343. Official language of the Union.—(1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the Official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the Official purposes of the Union for which it was being used immediately before such commencement.

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of |

(a) the English language, or

(b) the Devanagari form of numerals, for such purposes as may be specified in law

344. Commission and Committee of Parliament on official language.—(1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the Procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to —

(a) the progressive use of the Hindi language for the official purposes of the Union ;

(b) restrictions on the use of the English language for all or any of the official purpose of the Union.

(c) the language to be used for all or any of the purposes mentioned in article 348 ;

(d) the form of numerals to be used for any one or more specified purposes of the Union ;

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.

(3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

(4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

339. Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes.—(1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

340. Appointment of a Commission to investigate the conditions of backward classes.—(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

341. Scheduled Castes.—(1) The President may with respects to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or parts of or group within, any caste, race or tribe but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342. Scheduled Tribes.—The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

(2) Notwithstanding any thing in sub-clause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State.

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

(3) Notwithstanding anything in sub-clause (h) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bill introduced in, or Acts passed by, the Legislature of the State or in ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.

349. Special procedure for enactment of certain laws relating to language.—During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

CHAPTER IV.—SPECIAL DIRECTIVES

350.—Language to be used in representations for redress of grievances.—Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State as the case may be.

350A. Facilities for instruction in mother-tongue at primary stage.—It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

350B. Special Officer for linguistic minorities.—(1) There shall be a Special Officer for linguistic minorities to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

351. Directive for development of the Hindi language.—It shall be the duty of the Union to promote the spread of the Hindi language to develop it so that it may serve as a medium of expression for all the

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (2) and to report to the President their opinion thereon.

(6) Notwithstanding anything in article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report

CHAPTER II.—REGIONAL LANGUAGES

345 Official language or languages of a State—Subject to the provisions of article 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State.

Provided that until the Legislature of the State otherwise provides by law, English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution

346. Official language for communication between one State and another or between a State and the Union—The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union.

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication

347. Special provision relating to language spoken by a section of the population of a State.—On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout the State or any part thereof for such purpose as he may specify

CHAPTER III—LANGUAGES OF THE SUPREME COURT, HIGH COURT ETC.

348 Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc—(1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides—

(a) all proceedings in the Supreme Court and in every High Court

(b) the authoritative texts—

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinance promulgated by the President or the Governor of a State, and

(iii) of all orders, rules, regulations and bye laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language

may, while a Proclamation of Emergency is in operation, by order direct that all or any of the provisions of articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

(2) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

355. Duty of the Union to protect States against external aggression and internal disturbance.—It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution—

356. Provisions in case of failure of constitutional machinery in States.—(1) If the President on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

- (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the legislature of the State ;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament ;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the object of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation not being a Proclamation revoking a previous Proclamation is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of

elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

PART XVIII

EMERGENCY PROVISIONS

352. Proclamation of Emergency—(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

(2) A Proclamation issued under clause (1)—

- (a) may be revoked by a subsequent Proclamation ;
- (b) shall be laid before each House of Parliament ;
- (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

353. Effect of Proclamation of Emergency.—While a Proclamation of Emergency is in operation, then—

- (a) notwithstanding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power there of is to be exercised ;
- (b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring power and imposing duties, or authorising the conferring of power and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List.

354. Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation.—(1) The President

made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

359. Suspension of the enforcement of the rights conferred by Part III during emergencies.—(1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament,

360. Provisions as to financial emergency.—(1). If the President is satisfied that situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

(2) The provisions of clause (2) of article 352 shall apply in relation to a Proclamation issued under this article as they apply in relation to a Proclamation of Emergency issued under article 352.

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution—

(a) any such direction may include—

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.

PART XIX

MISCELLANEOUS

361. Protection of President and Governors and Rajpramukh.—(1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in

the second of the resolutions approving the Proclamation under clause (3) :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years :

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

357. Exercise of Legislative power under Proclamation issued under article 356.—(1) Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

- (a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf,
- (b) for Parliament or for the President or other authority in whom such power to make law is vested under sub-clause (a) to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof ;
- (c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

(2) any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature.

358. Suspension of provisions of article 19 during emergencies.—While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so

- (a) Any law made by the Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply there to subject to such exceptions or modification as may be specified in the notification, or
- (b) any existing law shall cease to have effect in any major aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article—

- (a) "major port" means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port ;
- (c) "aerodrome" means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.

365. Effect of failure to comply with, or to give effect to, directions given by the Union.—Where any State has failed to comply with, or to give effect to, any direction given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.

366. Definition.—In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

- (1) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income tax ;
- (2) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only ;
- (3) "article" means an article of this Constitution ;
- (4) "borrow" includes the raising of money by the grant of annuities, and "loan" shall be construed accordingly ;
- (5) "clause" means a clause of the article in which the expression occurs ;
- (6) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled :—
 - (a) that is not chargeable in respect of agricultural income ;
 - (b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals ;
 - (c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals ;

the exercise and performance of those powers and duties ;

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61 :

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

362. Rights and Privileges of Rulers of Indian States—In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 291 with respect to the personal rights, privileges and dignities of the Rulers of an Indian State.

363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.—(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sansad* or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sansad* or other similar instrument.

(2) In this article.—

(a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State : and

(b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by his Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

364. Special provisions as to major ports and aerodromes.—(1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—

- (22) "Ruler" in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler ;
- (23) "Schedule" means a Schedule to this Constitution ;
- (24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution ;
- (25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution ;
- (26) "securities" includes stock ;
- (27) "sub-clause" means a sub-clause of the clause in which the expression occurs ;
- (28) "taxation" include the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly ;
- (29) "tax or income" includes a tax in the nature of an excess profit tax ;
- (30) "Union territory" means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule.

367. Interpretation.—(1) Unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or laws or, of made by, Parliament, or to Acts or laws of, or made by the Legislature of a State shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor as the case may be:

(3) For the purposes of this Constitution "foreign State" means any State other than India :

Provided that, subject to the provisions of any law made by Parliament the President may be order declare any State not to be a foreign State for such purposes as may be specified in the order.

PART XX

AMENDMENT OF THE CONSTITUTION

368. Procedure for amendment of the Constitution.—An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting, it shall be presented to the President for his assent and upon

- (7) "corresponding Province", "corresponding Indian State" or "corresponding State" means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question ;
- (8) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly ;
- (9) "estate duty" means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass ;
- (10) "existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation ;
- (11) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935 ;
- (12) "goods" includes all materials, commodities, and articles ;
- (13) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount ;
- (14) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—
 - (a) any Court in the territory of India constituted or reconstituted under this Constitution as a High Court, and
 - (b) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution ;
- (15) "Indian State" means any territory which the Government of the Dominion of India recognised as such a State ;
- (16) "Part" means a Part of this Constitution ;
- (17) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund ;
- (18) "Proclamation of Emergency" means a Proclamation issued under clause (1) of article 352 ;
- (19) "public notification" means a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State ;
- (20) "railway" does not include—
 - (a) a tramway wholly within a municipal area, or
 - (b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway ;

- specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and
- (ii) such other matters in that said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

- (c) the provision of article (1) and of this article shall apply in relation to that State;
- (d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify;

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before the Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exception and modifications and from such date as he may specify:

Provided that the recommendations of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

371. Special provision with respect to the States of Andhra Pradesh, Punjab, Maharashtra and Gujarat.—(1) Notwithstanding anything in this Constitution, the President may by order made with respect to the State of Andhra Pradesh or Punjab, provide for the Constitution and functions of regional committees of the Legislative Assembly of the State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of the regional committees.

(2) Notwithstanding anything in this Constitution, the President may by order made with respect to the State of Maharashtra or Gujarat, provide for any special responsibility of the Government for—

- (a) the establishment of separate development boards for Vidarbha, Marathwada, and the rest of Maharashtra or, as the case may be, Saurashtra, Kutch and the rest of Gujarat with the

such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill :

Provided that if such amendment seeks to make any change in—

- (a) article 51, article 45, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

PART XXI

TEMPORARY TRANSITIONAL AND SPECIAL PROVISIONS

369. Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List.—Notwithstanding anything in this Constitution, Parliament shall, during a period of five years from the commencement of this Constitution, have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely:—

- (a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textile, raw cotton (including ginned cotton and unginned cotton or *kapas*), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica ;
- (a) offence against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all Courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any Courts ;

but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of the said period, except as respects things done or omitted to be done before the expiration thereof.

370. Temporary provisions with respect to the State of Jammu and Kashmir.—(1) Notwithstanding anything in this Constitution,—

- (a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir ;
- (b) the power of Parliament to make laws for the said State shall be limited—
- (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters

- (.) the composition of the regional council and the manner in which the members of the regional council shall be chosen :

Provided that the Deputy Commissioner of the Tuensang district shall be the Chairman *ex officio* of the regional council and the Vice-Chairman of the regional council shall be elected by the members thereof from amongst themselves :

- (ii) the qualifications for being chosen as, and for being, members of the regional council ;
- (iii) the term of office of, and the salaries and allowance, if any to be paid to members of the regional council ;
- (iv) the procedure and conduct of business of the regional council ;
- (v) the appointment of officers and staff of the regional council and there conditions of services ; and
- (vi) any other matter in respect of which it is necessary to make rules for the constitution and proper functioning of the regional council.

(2) Notwithstanding anything in this Constitution, for a period of ten years from the date of the formation of the State of Nagaland or for such further period as the Governor may, on the recommendation of the regional council, by public notification specify in this behalf,—

- (a) the administrations of the Tuensang district shall be carried on by the Governor ;
- (b) where any money is provided by the Government of India to the Government of Nagaland to meet the requirements of the State of Nagaland as a whole, the Governor shall in his discretion arrange for an equitable allocation of that money between the Tuensang district and the rest of the State ;
- (c) no Act of the Legislature of Nagaland shall apply to the Tuensang district unless the Governor, on the recommendation of the regional council, by public notification so directs and the Governor in giving such direction with respect to any such Act may direct that the Act shall in its application to the Tuensang district or any part thereof have effect subject to such exceptions or modifications as the Governor may specify on the recommendation of the regional council ;

Provided that any direction given under this sub-clause may be given so as to have retrospective effect :

- (d) the Governor may make regulations for the peace, progress and good government of the Tuensang district and any regulations so made may repeal or amend with retrospective effect, if necessary, any Act of Parliament or any other law which is for the time being applicable to that district ;
- (e) (i) one of the members representing the Tuensang district in the Legislative Assembly of Nagaland shall be appointed Minister for Tuensang affairs by the Governor on the advice of the Chief Minister and the Chief Minister in tendering his advice shall act on the recommendation of the the majority of themembers as aforesaid :

provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly ;

- (b) the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole ; and
- (c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole.

371A. Special provision with respect to the State of Nagaland.—(1) Notwithstanding anything in this Constitution,—

- (a) no Act of Parliament in respect of —
 - (i) religious or social practices of the Nagas,
 - (ii) Naga customary law and procedure,
 - (iii) administration of civil and criminal justice involving decisions according to Naga customary law,
 - (iv) ownership and transfer of land and its resources,
- shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides ;

- (b) the Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills-Tuensang Area immediately before the formation of that State continue therein or in any part thereof and in the discharge of his functions in relation thereto the Governor shall after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken ;

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this sub-clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment ;

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Nagaland, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order ;

- (c) in making his recommendation with respect to any demand for a grant, the Governor of Nagaland shall ensure that any money provided by the Government of India out of the Consolidated Fund of India for any specific service or purpose is included in the demand for a grant relating to that service or purpose and not in any other demand ;
- (d) as from such date as the Governor of Nagaland may by public notification in this behalf specify, there shall be established a regional council for the Tuensang district consisting of thirty-five members and the Governor shall in his discretion make rules providing for —

- (b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

Explanation I.—The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II.—Any law passed or made by Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modification as aforesaid, continue to have such extra-territorial effect.

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this constitution had not come into force.

Explanation IV.—An Ordinance promulgated by the Governor of a Province under section 88 or the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

372A. Power of the President to adapt laws.—(1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order made before the 1st day of November, 1957, make such adaptations and modifications of the law whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(2) Nothing in clause (1) shall be deemed to prevent a competent legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

373. Power of President to make order in respect of persons under the preventive detention in certain cases.—Until Provision is made by Parliament under clause (7) of article 22, or until the expiration of one year from the commencement of this Constitution, whichever is earlier, the said article shall have effect as if for any reference to Parliament in clause (4) and (7) thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President.

374. Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before his Majesty in Council.—(1) The Judges of the Federal Court holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become

- (iii) the Minister for Tuensang affairs shall deal with, and have direct access to the Governor on, all matters relating to the Tuensang district out he shall keep the Chief Minister informed about the same ;
- (f) notwithstanding anything in the foregoing provision of this clause, the final decision on all matters relating to the Tuensang district shall be made by the Governor in his discretion ;
- (g) in articles 54 and 55 and clause (4) of article 80, references to the elected members of the Legislative Assembly of a State or to each such member shall include references to the members or member of the Legislative Assembly of Nagaland elected by the regional council established under this article ;
- (h) in article 170—
 - (i) clause (1) shall, in relation to the Legislative Assembly of Nagaland, have effect as if for the word 'sixty', the words 'forty-six' had been substituted ;
 - (ii) in the said clause, the reference to direct election from territorial constituencies in the State shall include election by the members of the regional council established under this article ;
 - (iii) in clauses (2) and (3), references to territorial constituencies shall mean references to territorial constituencies in the Kohima and Mokokchung districts.

(3) If any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may by order do anything (including any adaptation or modification of any other article) which appears to him to be necessary for the purpose of removing that difficulty :

Provided that no such order shall be made after the expiration of three years from the date of the formation of the State of Nagaland.

Explanation—In this article, the Kohima, Mokokchung and Tuensang districts shall have the same meanings as in the State of Nagaland Act, 1962.

372. Continuance in force of existing laws and their adaptation,—

(1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law whether by way of repeal or amendment, as may be necessary or expedient and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed—

- (a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution ; or

- (b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

Explanation I.—The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II.—Any law passed or made by Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modification as aforesaid, continue to have such extra-territorial effect.

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this constitution had not come into force.

Explanation IV.—An Ordinance promulgated by the Governor of a Province under section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

372A. Power of the President to adapt laws.—(1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order made before the 1st day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(2) Nothing in clause (1) shall be deemed to prevent a competent legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

373. Power of President to make order in respect of persons under the preventive detention in certain cases.—Until Provision is made by Parliament under clause (7) of article 22, or until the expiration of one year from the commencement of this Constitution, whichever is earlier, the said article shall have effect as if for any reference to Parliament in clause (4) and (7) thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President.

374. Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before his Majesty in Council.—(1) The Judges of the Federal Court holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become

on such commencement the Judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 125 in respect of the Judges of the Supreme Court.

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgement, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such Court by this Constitution.

(4) On and from the commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State specified of Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment decree or order of any Court within that State shall cease, and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to and disposed of by, the Supreme Court.

(5) Further provisions may be made by Parliament by law to give effect to the provisions of this article.

375. Courts, authorities and officers to continue to function subject to the provisions of the Constitution.—All courts of civil, criminal and revenue jurisdiction, all authorities and officers, judicial, executive and ministerial, throughout the territory of India, shall continue to exercise their respective function subject to the provisions of this Constitution.

376. Provisions as to Judges of High Courts—(1) Notwithstanding anything in clause (2) of article 217, the judges of a High Court in any Province holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 221 in respect to the Judges of such High Court.

Any such Judge shall, notwithstanding that he is not a citizen of India, be eligible for appointment as Chief Justice of such High Court, or as Chief Justice or other Judge of any other High Court.

(2) The Judges of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the State so specified and shall, notwithstanding anything in clauses

(1) and (2) of article 217 but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article, the expression "Judge" does not include an acting Judge or an additional Judge.

377. Provisions as to Comptroller and Auditor-General of India.—The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148 in respect of the Comptroller and Auditor-General of India and be entitled to continue to hold office until the expiration of his term of office as determined under the provision which were applicable to him immediately before such commencement.

378. Provisions as to Public Service Commission.—(1) The members of the Public Service Commission for the Dominions of India holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the corresponding State or members of the Joint State Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

378 A. Special provision as to duration of Andhra Pradesh Legislative Assembly.—Notwithstanding anything contained in article 172, the Legislative Assembly of the State of Andhra Pradesh constituted under the provisions of sections 28 and 29 of the States Reorganisation Act, 1953, shall, unless sooner dissolved, continue for a period of five years from the date referred to in the said section 29 and no longer and the expiration of the said period shall operate as a dissolution of that Legislative Assembly.

379–391. Rep. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

392. Power of the President to remove difficulties.—(1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient.

Provided that no such order shall be made after the first meeting of

Parliament duly constituted under Chapter II of Part V.

(2) Every order made under clause (1) shall be laid before Parliament.

(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution, be exercisable by the Governor-General of the Dominion of India.

PART XXII

SHORT TITLE COMMENCEMENT AND REPEALS

393. Short title.—This Constitution may be called the Constitution of India.

394. Commencement.—This article and articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution.

395. Repeals.—The Indian Independence Act, 1947, and the Government of India Act, 1935, together with all enactments amending or supplementing the latter Act, but not including the Abolition of Privy Council Jurisdiction Act, 1949, are hereby repealed.

FIRST SCHEDULE

[Article 1 and 4]

I. THE STATES

<i>Name</i>	<i>Territories</i>
1. Andhra Pradesh	The territories specified in sub-section (1) of section 3 of the Andhra State Act, 1953, sub-section (1) of section 3 of the States Reorganisation Act, 1956, and the First Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959, but excluding the territories specified in the Second Schedule to the last mentioned Act.
2. Assam ..	.. The territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas, but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951 and the territories specified in sub-section (1) of section 3 of the State of Nagaland Act, 1962.
3. Bihar ..	.. The territories which immediately before the commencement of this Constitution were either comprised in the Province of Bihar or were being administered as if they formed part of that Province, but excluding the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer to Territories) Act, 1956.
4. Gujarat ..	.. The territories referred to in sub-section (1) of section 3 of the Bombay Reorganisation Act, 1960.
5. Kerala ...	.. The territories specified in sub-section (1) of section 5 of the States Reorganisation Act, 1956.

6. Madhya Pradesh *The territories specified in sub-section (1) of section 9 of the States Reorganisation Act, 1956 and the First Schedule to the Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959.*
7. Madras .. *The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in section 4 of the States Reorganisation Act, 1956, and the Second Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959, but excluding the territories specified in sub-section (1) of section 3 and sub-section (1) of section 4 of the Andhra State Act, 1953, and the territories specified in clause (b) of sub-section (1) of section 5, section 6 and clause (d) of sub-section (1) of section 7 of the States Reorganisation Act, 1956 and the territories specified in the First Schedule to the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959.*
8. Maharashtra .. *The territories specified in sub-section (1) of section 8 of the States Reorganisation Act, 1956, but excluding the territories referred to in sub-section (1) of section 3 of the Bombay Reorganisation Act, 1960.*
9. Mysore .. *The territories specified in sub-section (1) of section 7 of the States Reorganisation Act, 1956.*
10. Orissa .. *The territories which immediately before the commencement of this Constitution were either comprised in the Province of Orissa or were being administered as if they formed part of that Province.*
11. Punjab .. *The territories specified in section 11 of the States Reorganisation Act, 1956 and the territories referred to in Part II of the First Schedule to the Acquired Territories (Merger) Act, 1960 but excluding the territories referred to in Part II of the First Schedule to the Constitution (Ninth Amendment) Act, 1960, and the territories specified in sub-section (1) of section 3, section 4 and sub-section (1) of section 5 of the Punjab Reorganisation Act 1966.*

ces or were being administered as if they formed part of that Province.

14. West Bengal

The territories which immediately before the commencement of this Constitution were either comprised in the Province of West Bengal or were being administered as if they formed part of that Province and the territory of Chandernagore as defined in clause (c) of section 2 of the Chandernagore (Merger) Act, 1954 and also the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956.

15. Jammu and Kashmir. ... The territory which immediately before the commencement of this Constitution was comprised in the Indian State of Jammu and Kashmir.
16. Nagaland ... The territories specified in sub-section (1) of section 3 of the State of Nagaland Act, 1962.
17. Haryana ... The territories specified in sub-section (1) of section 3 of the Punjab Reorganisation Act, 1966, "and the territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966";

II. THE UNION TERRITORIES

<i>Names</i>	<i>Extent</i>
1. Delhi	... The territory which immediately before the commencement of this Constitution was Comprised in the Chief Commissioner's Province of Delhi.
2. Himachal Pradesh.	... The territories which immediately before the commencement of this Constitution were being administered as if they were Chief Commissioner's Provinces under the names of Himachal Pradesh and Bilaspur.
3. Manipur	... The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Manipur.
4. Tripura	... The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura.
5. The Andaman and Nicobar Islands,	... The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of the Andaman and Nicobar Islands.
6. The Laccadive, Minicoy and Amindivi Islands.	... The territory specified in section 6 of the States Reorganisation Act, 1956.

7. Dadra and Nagar Haveli ... The territory which immediately before the eleventh day of August, 1961 was comprised in Free Dadra and Nagar Haveli.
8. Goa, Daman and Diu ... The territories which immediately before the twentieth day of December, 1961 were comprised in Goa, Daman and Diu.
9. Pondicherry ... The territories which immediately before the sixteenth day of August 1962, were comprised in the French Establishments in India known as Pondicherry, Karikal, Mahe and Yanam.
10. Chandigarh ... The territories specified in section 4 of the Punjab Reorganisation Act, 1966.

SECOND SCHEDULE

(Articles 59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164(5), 183 and 221)

PART A

PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES

1. There shall be paid to the President and to the Governors of the States the following emoluments per mensem, that is to say:—

The President ...	...	...	...	10,000 rupees,
The Governor of a State ...	...	...	...	5,500 rupees.

2. There shall also be paid to the President and to the Governors of the States such allowances as were payable respectively to the Governor General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution.

3. The President and the Governors of the States throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4. While the Vice-President or any other person is discharging the functions of, or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be.

PART C

PROVISION AS TO THE SPEAKER AND THE DEPUTY SPEAKER OF THE HOUSE OF THE PEOPLE AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE COUNCIL OF STATES AND THE SPEAKER AND THE DEPUTY SPEAKER OF THE LEGISLATIVE ASSEMBLY AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE LEGISLATIVE COUNCIL OF A STATE.

7. There shall be paid to the Speaker of House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement.

8. There shall be paid to Speaker and the Deputy Speaker of the Legislative Assembly and to the Chairman and the Deputy Chairman of the Legislative Council of a State such salaries and allowances as were payable respectively to the Speaker and Deputy Speaker of the Legislative Assembly and the President and the Deputy President of the Legislative Council of the corresponding Province immediately before the commencement of this Constitution and, where the corresponding Province had no Legislative Council immediately before such commencement, there shall be paid to the Chairman and the Deputy Chairman of the Legislative Council of the State such salaries and allowances as the Governor of the State may determine.

PART D

PROVISION AS TO THE JUDGES OF THE SUPREME COURT AND OF THE HIGH COURTS

9. (1) There shall be paid to the Judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say—

The Chief Justice	--	...	...	...	5,000 rupees.
Any other Judge	...	...	...	...	4,000 rupees.

Provided that if a Judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Government or under the Government of a State or any of its predecessor Governments his salary in respect of service in the Supreme Court shall be reduced,—

- by the amount of that pension, and
- if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and
- if he has, before such appointment received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

(2) Every Judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a Judge who, immediately before the commencement of this Constitution,—

- was holding office as the Chief Justice of the Federal Court and has become on such commencement the Chief Justice of the Supreme Court under clause (1) of article 374, or
- was holding office as any other Judge of the Federal Court and has on such commencement become a Judge (other than the Chief Justice) of Supreme Court under the said clause,

during the period he holds office as such Chief Justice or other Judge, and every Judge who so becomes the Chief Justice or other Judge of the Supreme Court shall, in respect of time spent on actual service as such Chief Justice

or other Judge, as the case may be, be entitled to receive in addition to the salary specified in sub-paragraph (1) of this paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement.

(4) Every Judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in traveling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence [including leave allowances and pension of the Judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the Judges of the Federal Court.

10. (1) There shall be paid to the Judges of High Courts, in respect of time spent on actual service, salary at the following rates per mensem, that is to say,—

The Chief Justice	...	...	...	...	4,000 rupees.
Any other Judge	...	...	...	...	3,500 rupees.

Provided that if a Judge of a High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced—

- by the amount of that pension, and
- if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and
- if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

(2) Every person who immediately before the commencement of this Constitution—

- was holding office as the Chief Justice of a High Court in any Province and has on such commencement become the Chief Justice of the High Court in the corresponding State under clause (1) of the article 376, or
- was holding office as any other Judge of a High Court in any Province and has on such commencement become a Judge (other than the Chief Justice) of the High Court in the corresponding State under the said clause,

shall, if he was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, be entitled to receive in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, in addition to the salary specified in the said sub-paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement.

(3) Any person who, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, was holding office as the Chief Justice of the High Court of a State specified in Part B of the First Schedule and has on such commencement become the Chief Justice of the High Court of a State specified in the said Schedule as amended by the said Act, shall, if he was immediately before such commencement drawing any amount as allowance in addition to his salary, be entitled to receive in respect of time spent on actual service as such Chief Justice, the same amount as allowance in addition to the salary specified in sub-paragraph (1) of this paragraph.

11. In this Part, unless the context otherwise requires, —

- (a) the expression "Chief Justice" includes an acting Chief Justice and a "Judge" includes an *ad hoc* Judge ;
- (b) "actual service" includes—
 - (i) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the the President undertake to discharge ;
 - (ii) vacations, excluding any time during which the Judge is absent on leave ; and
 - (iii) joining-time on transfer from a High Court to the Supreme Court or from one High Court to another.

PART E

PROVISIONS AS TO COMPTROLLER AND AUDITOR GENERAL OF INDIA

12. (3) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.

(2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on such commencement the Comptroller and Auditor General of India under article 377 shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing as Auditor General of India immediately before such commencement.

(3) the rights in respect of leave of absence and pension and the other conditions of service of the Comptroller and Auditor-General of India shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed as references to the President.

THIRD SCHEDULE

[Articles 73(4), 99, 124(6), 148(2), 164(3), 183 and 219]

FORMS OF OATHS OR AFFIRMATIONS

I

Form of oath of office for a Minister for the Union :—
swear in the name of God

"I, A. B., do ————— that I will bear true faith and
solemnly affirm

allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a minister for the Union and that I will

do right to all manner of people in accordance with Constitution and the law, without fear or favour, affection or illwill."

II

Form of oath of secrecy for a Minister for the Union:—
swear in the name of God

"I, A.B., do _____ that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister."

III

A

Form of oath or affirmation to be made by a candidate for election to Parliament :—

"I, A.B., having been nominated as a candidate to fill a seat in the Council of State (or the House of the People)

swear in the name of God

do _____ that I will bear true faith and allegiance

solemnly affirm

to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

B

Form of oath or affirmation to be made by a member of Parliament :—

"I, A.B., having been elected (or nominated) a member of the Council of States (or the House of the people)

swear in the name of God

do _____ that I will bear true faith and allegiance

solemnly affirm

to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter."

IV

Form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and auditor-General of India :—

"I, A.B., having been appointed Chief Justice (or a Judge) of the Supreme Court of India (or Comptroller and Auditor-General of India)

swear in the name of God

do _____ that I will bear true faith and allegiance

solemnly affirm

to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear of favour, affection or illwill and that I will uphold the Constitution and the laws."

V

Form of oath of office for a Minister for a State :—
swear in the name of God

"I, A.B., do _____ that I will bear true faith

solemnly affirm

and allegiance to the Constitution of India as by law established, that I

will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the State of
 and that I will do right to all manner of
 people in accordance with the Constitution and the law without fear or
 favour, affection or illwill."

VI

Form of oath of secrecy for a Minister for a State :
 swear in the name of God

"I, A.B., do ————— that I will not directly or in-
 solemnly affirm

directly communicate or reveal to any person or persons any matter which
 shall be brought under my consideration or shall become known to me as a
 Minister for the State of except as may be
 required for the due discharge of my duties as such Minister.

VII

A

Form of oath or affirmation to be made by a candidate for election to
 the Legislature of a State :—

"I, A.B., having been nominated as a candidate to fill a seat in the
 Legislative Assembly (or Legislative Council),

swear in the name of God
 do ————— that I will bear true faith and allegia-
 solemnly affirm

nance to the Constitution of India as by law established and that I will up-
 hold the sovereignty and integrity of India."

B

Form of oath or affirmation to be made by a member of the Legisla-
 ture of a State :

"I, A.B., having been elected (or nominated) a member of the Legis-
 lative Assembly (or Legislative Council),

swear in the name of God
 do ————— that I will bear true faith and allegiance
 solemnly affirm

to the Constitution of India as by law established, that I will uphold sover-
 eignty and integrity of India and that I will faithfully discharge the duty
 upon which I am about to enter."

VIII

Form of oath or affirmation to be made by the Judges of a High
 Court :—

"I, A.B., having been appointed Chief Justice (or a Judge) of the
 High Court at (or of) do ————— that I will
 swear in the name of God

solemnly affirm
 bear true faith and allegiance to the Constitution of India as by law estab-
 lished, that I will uphold the sovereignty and integrity of India, that I
 will duly and faithfully and to the best of my ability, knowledge, and judg-
 ment perform the duties of my office with out fear or favour, affection
 or illwill and that I will uphold the Constitution and the laws."

FOURTH SCHEDULE

[Articles 4 (1) and 80 (2)]

Allocation of seats in the Council of States

To each State or Union territory specified in the first column of the following table, there shall be allotted the number of seats specified in the second column thereof opposite to that State or that Union territory, as the case may be.

T A B L E

1. Andhra Pradesh	...	...	...	18
2. Assam	...	...	...	7
3. Bihar	...	...	...	22
4. Gujarat	...	...	...	11
5. Haryana	...	...	...	5
6. Kerela	...	...	...	9
7. Madhya Pradesh	...	...	...	16
8. Madras	...	...	...	18
9. Maharashtra	...	...	...	19
10. Mysore	...	...	...	12
11. Orissa	...	...	...	10
12. Punjab	...	...	...	7
13. Rajasthan	...	...	...	10
14. Uttar Pradesh	...	...	...	34
15. West Bengal	...	...	...	16
16. Jammu and Kashmir	...	...	...	4
17. Nagaland	...	...	...	1
18. Delhi	...	...	...	3
19. Himachal Pradesh	...	...	...	3
20. Manipur	...	...	...	1
21. Tripura	...	...	...	1
22. Pondicherry	...	...	...	1
TOTAL				228

FIFTH SCHEDULE

[Article 244 (1)]

Provisions as to the administration and Control of Scheduled Areas and Scheduled Tribes

PART A

GENERAL

1. Interpretation.—In this Schedule, unless the context otherwise requires, the expression "State" does not include the State of Assam.

2. Executive power of a State in Scheduled Areas.—Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

3. Report by the Governor to President regarding the administration of Scheduled Areas.—The Governor of each State having Sched-

nled Areas therein shall annually, or whenever so required by the President make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

PART B

ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. Tribes Advisory Council.—(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State:

Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by Governor.

(3) The Governor may make rules prescribing or regulating, as the case may be,—

- (a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof;
- (b) the conduct of its meetings and its procedure in general; and
- (c) all other incidental matters.

5. Law applicable to Scheduled Areas.—(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may be specified in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

2. The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
- (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
- (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

3. In making any such regulation as is referred to in sub-paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

4. All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

5. No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C

SCHEDULED AREAS

6. Scheduled Areas—(1) In this Constitution, the expression "Scheduled Area" means such areas as the President may by order declare to be Scheduled Areas.

2. The President may at any time by order—

- (a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;
- (b) alter, but only by way of rectification of boundaries, any Scheduled Area;
- (c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D

AMENDMENT OF THE SCHEDULE

7. Amendment of the Schedule.—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

SIXTH SCHEDULE

[Articles 244 (2) and 275 (1)]

Provisions as to the Administration of Tribal Area in Assam

1. Autonomous districts and autonomous regions.—(1) Subject to the provisions of this paragraph, the tribal areas in each item of Part A of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(3) Governor may, by public notification,—

- (a) include any area in Part A of the said table,
- (b) exclude any area from Part A of said table,
- (c) create new autonomous district,
- (d) increase the area of any autonomous district,
- (e) diminish the area of any autonomous district,
- (f) unite two or more autonomous districts or parts thereof so as to form one autonomous district,
- (g) define the boundaries of any autonomous district,

provided that no order shall be made by the Governor under the clause (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule.

2. Constitution of District Councils and Regional Councils.

There shall be a District Council for each autonomous district consisting not more than twenty four members, of whom not less than three-fourths shall be elected on the basis of adult suffrage.

(2) There shall be a separate Regional Council for each area constituted on autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (*name of district*)" and the Regional Council of (*name of region*)" shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the area under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Council or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for—

- (a) the composition of the District Councils and Regional Councils and the allocation of seats therein ;
- (b) the delimitation of territorial constituencies for the purposes of elections to those Councils.
- (c) the qualifications for voting at such elections and the preparation of electoral rolls therefore ;
- (d) the qualifications for being elected at such elections as members of such Councils ;
- (e) the term of office of members of such Councils ;

- (f) any other matter relating to or connected with elections or nominations to such Councils ;
- (g) the procedure and the conduct of business in the District and Regional Councils.
- (h) the appointment of officers and staff of the District and Regional Councils.

(7) The District or the Regional Council may after its first constitution, make rules with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules regulating—

- (a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business ; and
- (b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be :

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such, Council :

Provided further that the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, of the North Cachar and Mikir Hills shall be the Chairman *ex officio* of the District Council in respect of the territories included in items 5 and 6 respectively of part A of the table appended to paragraph 20 of this Schedule and shall have power for a period of six years after the first constitution of the District Council, subject to the control of the Governor, to annul or modify any resolution or decision of the District Council or to issue such instructions to the District Council, as he may consider appropriate, and the District Council shall comply with every such instruction issued.

3. Power of the District Council and Regional Council to make laws.—(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

- (a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest, for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town :

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, [for public purposes by the Government of Assam in accordance with the law for the time being in force authorising such acquisition ;

- (b) the management of any forest not being a reserved forest ;
- (c) the use of any canal or water-course for the purpose of agriculture ;
- (d) the regulation of the practice of *jhum* or other forms of shifting cultivation ;
- (e) the establishment of village or town committees or councils and their powers

- (f) any other matter relating to village or town administration, including village or town police and public health and sanitation ;
- (g) the appointment or succession of Chiefs or Headmen ;
- (h) the inheritance of property ;
- (i) marriage ;
- (j) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

Administration of justice in autonomous districts and autonomous regions.—(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases of which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officer as may be necessary for the administration of the law made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area as the case may be other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.

(4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating—

- (a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph ;
- (b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph ;
- (c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph ;
- (d) the enforcement of decisions and orders of such Council and courts ;
- (e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.

5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences.—(1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said Council, Court or officer shall try the suits, cases or offences in exercise of the power so conferred.

(2) The Governor, may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

6. Powers of the District Council to establish primary schools, etc.—The District Council for an autonomous district may establish construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries fisheries, roads and waterways in the district and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary school in the district.

7. District and Regional Funds.—(1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the courts of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

(2) Subject to the approval of the Governor, rules may be made by the District Council and by the Regional Council for the management of the District Fund or, as the case may be the Regional Fund, and the rules so made may prescribe the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

8. Powers to assess and collect land revenue and to impose taxes.—

(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of Assam in assessing lands for the purpose of land revenue in the State of Assam generally

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Council, if any within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on person resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district that is to say—

- (a) taxes on professions, trades, callings and employments;
- (b) taxes on animals, vehicles and boats;
- (c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and
- (d) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulation to provide for the levy and collection of any of the taxes specified in sub-paragraph (2) and (3) of this paragraph.

9. Licences or leases for the purpose of prospecting for, or extraction of, minerals.—(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of Assam in respect of any area within an autonomous district as may be agreed upon between the Government of Assam and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

10. Power of District Council to make regulations for the control of money-lending and trading by non tribals.—(1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

- (a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending;
- (b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;
- (c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council;
- (d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council.

Provided that no regulations may be made under this paragraph unless they are by passed by a majority of not less than three-fourths of the total membership of the District Council.

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender to a trader who has been carrying on business within the district since before the time of the making of such regulations.

(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

11. Publication of laws, rules and regulations made under the Schedule.—All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the official Gazette of the State and shall on such publication have the force of law.

12. Application of Acts of Parliament and of the Legislature of the State to autonomous districts and autonomous regions.—(1) Notwithstanding anything in this Constitution—

(a) no Act of the Legislature of the State in respect of any of the matters specified in paragraph of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exception or modifications as it thinks fit.

(b) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State to which the provisions of clause (a) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notifications.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement.—The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the Consolidated Fund of the State of Assam shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 202.

14. Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions.—(1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous region in the State, including matters specified in clauses (c), (d), (e) and (f) of sub-paragraph (3) of paragraph 1 of this

Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

- (a) the provision of educational and medical facilities and communications in such districts and regions ;
- (b) the need for any new or special legislation in respect of such district and regions , and
- (c) the administration of the laws, rules and regulations made by the district and regional Councils ;

and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of Assam.

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

15. Annulment or suspension of acts and resolutions of District and Regional Councils.—(1) If at any time the Governor is satisfied that an act or resolution of a District or a Regional Council is likely to endanger the safety of India, he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefore shall be laid before the Legislature of the State, as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made ;

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

16. Dissolution of a District or a Regional Council.—The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a district or a Regional Council and—

- (a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or
- (b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months ;

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this

paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election :

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may, an opportunity of placing its views before the Legislature of the State.

17. **Exclusion of areas from autonomous districts in forming constituencies in such districts.**—For the purposes of election to the Legislative Assembly of Assam, the Governor may by order declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.

18. **Application of the provisions of this Schedule to areas specified in Part B of the table appended to paragraph 20.**—(1) The Governor may—

- (a) subject to the previous approval of the President, by public notification, apply all or any of the foregoing provisions of this Schedule to any tribal area specified in Part B of the table appended to paragraph 20 of this Schedule or any part of such area and thereupon such area or part shall be administered in accordance with such provisions, and
- (b) with like approval, by public notification, exclude from the said table any tribal area specified in Part B of that table or any part of such area.

(2) Until a notification is issued under sub-paragraph (1) of this paragraph in respect of any tribal area specified in Part B of the said table or any part of such area, the administration of such area or part of such area, the administration of such area or part thereof, as the case may be, shall be carried on by the President through the Governor of Assam as his agent and the provisions of article 240 shall apply thereto as if such area or part thereof were a Union territory specified in that article.

(3) In the discharge of his function under sub-paragraph (2) of this paragraph as the agent of the President the Governor shall act in his discretion.

repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

(2) Any direction given by the Governor under clause (a) of sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

(3) All regulations made under clause (b) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

20. **Tribal areas.**—(1) The areas specified in Parts A and B of the table below shall be the tribal areas within the State of Assam.

(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised, within the cantonment and municipality of Shillong but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Myliem :

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8, and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the District.

(2A) The Mizo District shall comprise the area which at the commencement of this Constitution was known as the Lushai Hills District.

(3) Any reference in the table below to any district (other than the United Khasi-Jaintia Hills District and the Mizo District) or administrative area shall be construed as a reference to that district or area at the commencement of this Constitution :

Provided that the tribal areas specified in Part B of the table below shall not include any such areas in the plains as may, with the previous approval of the President, be notified by the Governor of Assam in that behalf.

TABLE Part A

1. The United Khasi-Jaintia Hills District.
2. The Garo Hills District.
3. The Mizo District.
5. The North Cachar Hills.
6. The Mikir Hills.

Part B

1. North East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District and Mising Hills District.

21. **Amendment of the Schedule.**—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

SEVENTH SCHEDULE

ARTICLE 246

List I—Union List

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.
2. Naval, military and airforce; any other armed forces of the Union.
3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.
4. Naval, military and air force works.
5. Arms, firearms, ammunition and explosives.
6. Atomic energy and mineral resources necessary for its production.
7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
8. Central Bureau of Intelligence and Investigation.
9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.
10. Foreign affairs; all matters which bring the Union into relation with any foreign country.
11. Diplomatic, consular and trade representation.
12. United Nations Organisation.
13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.
15. War and peace.
16. Foreign jurisdiction.
17. Citizenship, naturalisation and aliens.
18. Extradition.
19. Admission into, and emigration and expulsion from, India: passport and visas.
20. Pilgrimages to places outside India.
21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
22. Railways.
23. Highways declared by or under law made by Parliament to be national highways.
24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.

23. Maritime shipping and navigation, including shipping any navigation on tidal waters ; provision of education and training for the mercantile marine and regulation of such education and training provided by State and other agencies.

26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

27. Ports declared by or under law made by Parliament or existing law to be major port, including their delimitation, and the constitution and powers of port authorities therein.

28. Port quarantine, including hospitals connected therewith ; seamen's and marine hospitals.

29. Airways : aircraft and air navigation ; provision of aerodromes ; regulation and organisation of air traffic and of aerodromes ; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies,

30. Carriage of passengers and goods by Railway, sea or air, or by national waterways in mechanically propelled vessels.

31. Posts and telegraphs ; telephones, wireless, broadcasting and other like forms of communication.

32. Property of the Union and the revenue therefrom, but as regards property situated in the State subject to legislation by the State, save in so far as Parliament by law otherwise provides.

34. Courts of wards for the estates of Rulers of Indian States.

35. Public debt of the Union.

36. Currency, coinage and legal tender ; foreign exchange.

37. Foreign loans,

38. Reserve Bank of India.

39. Post Office Savings Bank.

40. Lotteries organised by the Government of India or the Government of a State.

41. Trade and commerce with foreign countries ; import and export across customs frontiers ; definition of customs frontiers.

42. Inter-State trade and commerce.

43. Incorporation, regulation and winding up of trading corporations including banking, insurance and financial corporations but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations whether trading or not, with objects not confined to one State, but not including universities.

45. Banking.

46. Bills of exchange, cheques, promissory notes and other like instruments.

47. Insurance.

48. Stock exchanges and futures markets.

49. Patents, inventions and designs ; copyright ; trade-marks and merchandise marks.

50. Establishment of standards of weight and measure.

51. Establishment of standards of quality goods to be exported out of India or transported from one State to another.

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

53. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
54. Regulations of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
55. Regulation of labour and safety in mines and oil fields.
56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
57. Fishing and fisheries beyond territorial waters.
58. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.
59. Cultivation, manufacture, and sale of export, of opium.
60. Sanctioning of cinematograph films for exhibition.
61. Industrial disputes concerning Union employees.
62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.
63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University, and any other institution declared by Parliament by law to be an institution of national importance.
64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
65. Union agencies and institutions for—
 - (a) professional, vocational or technical training, including the training of police officers; or
 - (b) the promotion of special studies or research; or
 - (c) scientific or technical assistance in the investigation or detection of crime.
66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
67. Ancient and historical monuments and records, and archaeological sites and remains, declared by law made by Parliament to be of national importance.
68. The survey of India, the Geological, Botanical, Zoological and Anthropological Survey of India; Meteorological organisations.
69. Census.
70. Union public services; all-India services; Union Public Service Commission.
71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.

72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.

73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.

74. Powers, privileges and immunities of each House of Parliament and of the members and the committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.

75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.

76. Audit of the accounts of the Union and of the States.

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory.

80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

81. Inter-State migration; inter-State quarantine.

82. Taxes on income other than agricultural income.

83. Duties of customs including export duties.

84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption ;

(b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

85. Corporation tax.

86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

87. Estate duty in respect of property other than agricultural land.

88. Duties in respect of succession to property other than agriculture land.

89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.

90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.

91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

92. Taxes on the sale or purchase of newspapers and on advertisements published therein.

92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

93. Offences against laws with respect to any of the matters in this List.

94. Inquiries, surveys and statistics for the purpose of any of the matters in this List.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

List II—State List

1. Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power).

2. Police, including railway and village police.

3. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government of village administration.

6. Public health and sanitation, hospitals and dispensaries.

7. Pilgrimages, other than pilgrimages to places outside India.

8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

9. Relief of the disabled and unemployable.

10. Burials and burial grounds; cremations and cremation grounds.

11. Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.

12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

16. Pounds and the prevention of cattle trespass.

17. Water that is to say water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

19. Forests.

20. Protection of wild animals and birds.

21. Fisheries.

22. Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

24. Industries subject to the provisions of entries 7 and 52 of List I.

25. Gas and gas-works.

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

28. Markets and fairs.

29. Weights and measures except establishment of standards.

30. Money-lending and money-lenders; relief of agricultural indebtedness.

31. Inns and inn-keepers.

32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I, sports, entertainments and amusements.

34. Betting and gambling.

35. Works lands and buildings vested in or in the possession of the State.

36. Elections to the Legislature of the State subject to the provisions of any law made Parliament.

37. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.

38. Powers, privileges and immunities of the Legislative Assembly and the members and of the committees thereof and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Ministers for the State.
41. State public services, State Public Service Commission.
42. State pensions that is to say, pensions payable by the State or out of the Consolidated Fund of the State.
43. Public debt of the State.
44. Treasure trove.
45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
46. Taxes on agricultural income.
47. Duties in respect of succession to agricultural land.
48. Estate duty in respect of agricultural land.
49. Taxes on lands and buildings.
50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
51. Duties of excise on the following goods, manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India :—
 - (a) alcoholic liquors for human consumption ;
 - (b) opium, Indian hemp and other narcotic drugs and narcotics ;but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
52. Taxes on the entry of goods into a local area for consumptions, use or sale therein.
53. Taxes on the consumption or sale of electricity.
54. Taxes on the sale or purchase of goods other than newspapers, to the provisions of entry 92 A of List I.
55. Taxes on advertisements other than advertisements published in the newspapers.
56. Taxes on goods and passengers carried by road or on inland waterways.
57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.
58. Taxes on animals and boats.
59. Tolls.
60. Taxes on professions, trades, callings and employments.
61. Capitation taxes.
62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
63. Rates of stamps duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
64. Offences against laws with respect to any of the matters in this List.
65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
66. Fees in respect to any of the matters in this List, but not including fees taken in any Court.

List III - Concurrent List

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against law with respect to any of the matters specified in List I, or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

5. Preventive detention for reasons connected with the security of a State, in maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention

4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.

5. Marriage and divorce; infants and minors; adoption; wills; intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

6. Transfer of property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

8. Actionable wrongs.

9. Bankruptcy and insolvency.

10. Trust and Trustees.

11. Administrators-general and official trustees.

12. Evidence and oath; recognition of laws, public acts and records, and judicial proceedings.

13. Civil procedure including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

14. Contempt of court, but not including contempt of the Supreme Court.

15. Vagrancy; nomadic and migratory tribes.

16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.

17. Prevention of cruelty to animals.

18. Adulteration of foodstuffs and other goods.

19. Drugs and pensions, subject to the provisions of entry 49 of list I with respect to opium.

20. Economic and social planning.

21. Commercial and industrial monopolies, combines and trusts.

22. Trade unions; industrial and labour disputes.

23. Social security and social insurance; employment and unemployment.

24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

25. Vocational and technical training of labour.

26. Legal, medical and other professions,
27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up the Dominions of India and Pakistan.
28. Charities and charitable institutions, charitable and religious endowments and religious institutions.
29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.
30. Vital statistics including registration of births and deaths.
31. Ports other than those declared by or under law made by Parliament or existing law to be major ports.
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.
33. Trade and commerce in, and the production, supply and distribution of,—
 - (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products,
 - (b) foodstuffs, including edible oilseeds and oils ;
 - (c) cattle fodder, including oilcakes and other concentrates ;
 - (d) raw cotton, whether ginned or unginned, and cotton seed ; and
 - (e) raw jute.
34. Price control.
35. Mechanically propelled vehicles including the principles on which taxes on such vehicle are to be levied.
36. Factories.
37. Boilers.
38. Electricity.
39. Newspapers, books and printing presses.
40. Archaeological sites and remains other those declared by or under law made by Parliament to be of national importance.
41. Custody, management and disposal of property (including agricultural land) declared by law to be evectue property.
42. Acquisition and requisitioning of property.
43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.
44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
45. Inquiries and statistics for the purposes of and of the matters specified in List II or List III.
46. Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this List.
47. Fees in respect of any of the matters in this List, but not including fees taken in any court

EIGHTH SCHEDULE

Article 344 (I) and 351

Languages

1. Assamese.
2. Bengali.
3. Gujarati.
4. Hindi.
5. Kannada.
6. Kashmiri.
7. Malayalam.
8. Marathi,
9. Oriya.
10. Punjabi.
11. Sanskrit.
12. Tamil.
13. Telugu.
14. Urdu.

NINTH SCHEDULE

Article 31B

1. The Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950).
2. The Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act LXVII of 1948).
3. The Bombay Malek Tenure Abolition Act, 1949 (Bombay Act LXI of 1949).
4. The Bombay Taluqdari Tenure Abolition Act, 1949 (Bombay Act LXII of 1949).
5. The Panch Mahals Mehawassi Tenure Abolition Act, 1949 (Bombay Act LXIII of 1949).
6. The Bombay Khoti Abolition Act, 1950 (Bombay Act VI of 1950).
7. The Bombay Paragana and Kulkarni Watan Abolition Act, 1950 (Bombay Act LX of 1950).
8. The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Madhya Pradesh Act I of 1951).
9. The Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948).
10. The Madras Estates (Abolition and Conversion into Ryotwari) Amendment Act, 1950 (Madras Act I of 1950).
11. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Uttar Pradesh Act I of 1951).
12. The Hyderabad (Abolition of Jagirs) Regulation, 1358F (No. LXIX of 1358, Fasli).
13. The Hyderabad Jagirs (Commutation) Regulation, 1359F (No. XXV of 1359, Fasli).
14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950).

15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U. P. Act XXVI of 1948).
16. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948).
17. Sections 52A to 52G of the Insurance Act, 1938 (Act IV of 1938), as inserted by section 42 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950).
18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951).
19. Chapter III-A of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951), as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953).
20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXIX of 1951.
21. The Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Andhra Pradesh Act X of 1961).
22. The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Validation) Act, 1961 (Andhra Pradesh Act XXI of 1961).
23. The Andhra Pradesh (Telangana Area) Ijara and Kowli Land Cancellation of Irregular Pattas and Abolition of Concessional Assessment Act, 1961 (Andhra Pradesh Act XXXVI of 1961).
24. The Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959 (Assam Act IX of 1961).
25. The Bihar Land Reforms (Amendment) Act, 1953 (Bihar Act XX of 1954).
26. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962), (except section 28 of this Act).
27. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1954 (Bombay Act I of 1955).
28. The Bombay Taluqdari Tenure Abolition (Amendment) Act, 1957 (Bombay Act XVIII of 1958).
29. The Bombay Inams (Kutch Area) Abolition Act, 1958 (Bombay Act XCVIII of 1958).
30. The Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960 (Gujarat Act XVI of 1960).
31. The Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act XXVII of 1961).
32. The Sagbara and Mehwasai Estates (Proprietary Rights Abolition, etc.) Regulation, 1962 (Gujarat Regulation I of 1962).

33. The Gujarat Surviving Alienations Abolition Act, 1963 (Gujarat Act XXXIII of 1963), except in so far as this Act relates to an alienation referred to in sub-clause (d) of clause (3) of section 2 thereof.
34. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act XXVII of 1961).
35. The Hyderabad Tenancy and Agricultural Lands (Repealment, Validation and Further Amendment) Act, 1961 (Maharashtra Act XLV of 1961).
36. The Hyderabad Tenancy and Agricultural Lands Act, 1950 (Hyderabad Act XXI of 1950).
37. The Jenmikaram Payment (Abolition) Act, 1960 (Kerala Act III of 1961).
38. The Kerala Land Tax Act, 1961 (Kerala Act XIII of 1961).
39. The Kerala Land Reforms Act, 1963 (Kerala Act I of 1964).
40. The Madhya Pradesh Land Revenue Code, 1959 (Madhya Pradesh Act XX of 1959).
41. The Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (Madhya Pradesh Act XX of 1960).
42. The Madras Cultivating Tenants Protection Act, 1955 (Madras Act XXV of 1955).
43. The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Madras Act XXIV of 1956).
44. The Madras Occupants of Kndiviruppu (Protection from Eviction) Act, 1961 (Madras Act XXXVIII of 1961).
45. The Madras Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Madras Act LVII of 1961).
46. The Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Madras Act LVIII of 1961).
47. The Mysore Tenancy Act, 1952 (Mysore Act XIII of 1952).
48. The Coorg Tenants Act, 1957 (Mysore Act XIV of 1957).
49. The Mysore Village Offices Abolition Act, 1961 (Mysore Act XIV of 1961).
50. The Hyderabad Tenancy and Agricultural Lands (Validation) Act, 1961 (Mysore Act XXXVI of 1961).
51. The Mysore Land Reforms Act, 1961 (Mysore Act X of 1962).
53. The Orissa Land Reforms Act, 1960 (Orissa Act XVI of 1960).
53. The Orissa Merged Territories (Village Offices Abolition) Act, 1963 (Orissa Act X of 1963).
54. The Punjab Security of Land Tenures Act, 1953 (Punjab Act X of 1953).
55. The Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955).
53. The Rajasthan Zamindari and Biswedari Abolition Act, 1959 (Rajasthan Act VIII of 1959).

57. The Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (Uttar Pradesh Act XVII of 1960),
58. The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 (Uttar Pradesh Act I of 1961).
59. The West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954).
60. The West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956).
61. The Delhi Land Reforms Act, 1954 (Delhi Act VIII of 1954).
62. The Delhi Land Holdings (Ceiling) Act, 1960 (Central Act 24 of 1960).
63. The Manipur Land Revenue and Land Reforms Act, 1960 (Central Act 33 of 1963)
64. The Tripura Land Revenue and Land Reforms Act, 1960 (Central Act 43 of 1960).

Explanation.—Any acquisition made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act III of 1955), in contravention of the second proviso to clause (1) of article 31A shall, to the extent of the contravention, be void.

TABLE OF CASES

A

Abbasbhai v. Gulamvali, A. I. R. 1964 S. C. 134	441
A. B. Cettar v. State of Madras, A. I. R. 1959 S. C. 605	512
Abdual v. Bhawan, A. I. R. 1966 S. C. 1718.	29
Abdul Hakim v. State of Bihar, A. I. R. 1961 S. C. 448, (1961) 2 S. C. R. 610.	228, 249, 323
Abdul Jabbar v. State of J. & K. (1957) S. C. R. 51 A. I. R. 1957 S. C. 281.	37, 295
Abdul Khader v. State of Mysore (1953) S. C. J. 468 A. I. R. 1953 S. C. 355.	136, 153, 156
Abdual Rehman v. State of Bombay, A. I. R. 1959 S. C. 1315.	203, 205
Abdul Rehman v. Casim & Sons 60 Ind. Appeals 76.	393
Abdul Rahim v. State of Bombay, A. I. R. 1959 S. C. 1315., 1960 (1) S. C. R. 285	281, 203, 255. 461
Abdual Satar v. State of Bombay 1953 S. C. D. 310.	73
Abdual Satar v. State of Gujrat A. I. R. 1965 S. C. 810	109, 113
Abdul Shakar v. R. G. Pappara, A. I. R. 1963 S. C. 1150	393
Abdul Shakur v. Rikhab Chand A. I. R. 1958 S. C. 52 1958 S. C. R. 382.	81, 366 367
Abraham Wazir v. State of Bombay, A. I. R. 1954 S. C. 229, 1954 S. C. R. 933.	146
A. C. Commission v. P. N. Sharma, A. I. R. 1965 S. C. 1595.	501
Acbutan v. State of Kerala, A. I. R. 1959 S. C. 490	176, 226, 230
Acbyut Adhicay v. State of West Bengal, A. I. R. 1963 S. C. 1039	405
A. C. Industries Ltd. v. Workmen, A. I. R. 1962 S. C. 1100.	147
Administer General of Bengal v. Prem Lal Mullick I. A. 107 22 Cal. 788 P. C.	21
A. D. Parthasarathy v. State of Andhra Pradesh, petition for special leave of appeal C. A. No. 169 of 1965 decided on 7-5-1965	460
A. G. for Commoiwelth v. Colonial sugar Refining Co. (1914) A. G. 237	134
A. G. For Ontario Hamilton Street 1903 A. C. 524	449
A. G. of Sachatchewen v. A. G. of Canada 1949 P. C. 190	
Aher Ahmad v. Union of India A. I. R. 1962 S. C. 1052	113
A. I. Station Master v. General Manager, A. I. R. 1960 S. C. 384 : (1960) 2 S. C. R. 311	130, 176
Ajaib Singh v. Gurcharan Singh, A. I. R. 1965 S. C. 1619	337
Ajimunja v. Dy. Custodian, A. I. R. 1951 S. C. 365	87
Ajit Singh v. State of Punjab, A. I. R. 1967 S. C. 856	400, 473
Akadsi v. State of Orissa, A. I. R. 1963 S. C. 1047	268, 270, 271

Ajoy Kumar v. Local Board, A. I. R. 1965 S. C. 1561	160
A. K. Gopalan v. State of U. P., A. I. R. 1955 S. C. 168	131
Akhar Khan v. Union of India, 1962 (1) S. C. R. 779	111
Alembic Chemical Works v. Workmen (1961) 3 S. C. R. 276	16, 47
All India Bank Employees Association v. National Industrial Tribunal Bombay 1962-3 S. C. R. 269.	189, 194, 196, 197, 199, 516
Amalgamated Coal Fields v. Janapada Sabha, A. I. R. 1961 S. C. 964 : (1962) 1 S. C. R. 1,	469, 470
Amar Chand v. Ambica Jute Mills, A. I. R. 1966 S. C. 1036	441
Amarsarjit v. State of Punjab, A. I. R. 1962 S. C. 1305	401
Amar Singh v. Custodian, A. I. R. 1957 S. C. 599	86, 209, 211 210
Amar Singh v. State of Rajasthan, A. I. R. 1958 S. C. 228	515, 522
Amar Singh v. State of Rajasthan, A. I. R. 1965 S. C. 504	20, 34, 43, 313
Amarsurjit Singh v. State of Punjab, A. I. R. 1962 S. C. 1305	401
Amba Parsad v. Mahaboob Ali, A. I. R. 1965 S. C. 54	81
Ameeroonissa v. Mahboob, A. I. R. 1953 S. C. 91 (1953) S. C. R. 404 : (1953) S. C. A. 565	133, 153
Ameerun Nisa v. Mahboob Begum, A. I. R. 1955 S. C. 352	55
A. M. Allison v. B. L. Ser., A. I. R. 1937 S. C. 227 : (1957) S. C. R. 359	397, 417
Ammathayee v. Kunason, A. I. R. 1967 S. C. 569	396
Amrit Lal Bhogi Lal case A. I. R. 1958 S. C. 868	473
Ananda v. Chief Secretary to Government of Madras, A. I. R. 196 S. C. 627	43 336
Ananda v. State of Orissa, A. I. R. 1956 S. C. 17 (1955) 2 S. C. R. 919	220, 225, 264 503
Anand Nivas v. Anand, A. I. R. 1965 S. C. 414	17
Anant v. State of Bombay, A. I. R. 1960 S. C. 500 (1960) 2 S. C. R. 460	453, 455
Anant Parsad v. State of A. P., A. I. R. 1963 S. C. 853,	145, 215, 262, 265 358
Anant Singh v. State of Bombay, A. I. R. 1958 S. C. 915	44
Andhra Scientific Co. Ltd. v. Seshagir Rao, A. I. R. 1967 S. C. 408	466
Augushala v. Debabrata A. I. R. 1951 S. C. 1125	86
A. N. Lakshman v. I. T. Officer 1958 S. C. 795	67
Anwar Hussain v. Ajoy Kumar A. I. R. 1965 S. C. 1657	76
Anwarkhan v. State of Bombay, (1961) 1 S. C. R. 709 : A. I. R. 1961 S. C. 213	63
A. P. S. R. T. v. Satyanaryana, A. I. R. 1965 S. C. 1303	439
Arnold v. The King 41 Indian Appeal 149	355
Arunachala Nadar, M. C. V. S. v. State of Madras, A. I. R. 1959 S. C. 300 : (1959) S. C. J. 297 : (1959) Supp. 1 S. C. R. 92	229, 226

Asgar Ali v. State of Bombay, A.I.R. 1957 S.C. 503 : (1957) S.C.R. 678	83
Ashutosh Lahiri v. The State of Delhi, A. I. R. 1953. S.C. 451 (1950) S.C. J. 433 : (1950) 2 M. L. J 555 (S.C.)	285
Asia Industries v. Sarup Singh A. I. R. 1966 S.C. 346	16 17, 21 28
Assam Oil Co. Ltd. v. Its workmen 1960 (1) L.L. J. 587	197
Assam State v. Sristikar, A. I. R. 1957 S.C. 414	52
Assistant Collector of Customs v. Sita Ram A. I. R. 1966 S.C. 955	27, 40
A. S. P. R. T. Corporation v. Satynaryana Transporters A. I. R. 1965. S.C. 1303	494
Associated Cement Co., v. P. N. Sharma, A. I. R. 1965 S.C. 1895	422, 496, 494,
Associated Cement Co., v. Vyas, A. I. R. 1960 S.C. 665; (1960) 2 S.C.R. 974	399, 488
Associated Tube Wells v. Gujarmal, A. I. R. 1957 S.C. 742	458
Aswini v. Arabinda. A. I. R. (1952) S.C. 369 (1953) S.C.R. 55	131, 438
Aswini Kumar v. Arabinda Bose, A. I. R. 1952 S.C. 369	13, 22, 23, 25, 38, 43
Athmanathswami Devasthanam v. K. Gopalswami A. I. R. 1966 S.C. 331	66
Atiabari Tea Co. v. State of Assam, A. I. R. 1961 S.C. 232 : (1961) 1 S.C.R. 809	29, 41, 43, 270, 540
Atmaram v. State of Punjab, A. I. R. 1959 S.C. 519 : (1959) Supp. (1) S.C.R. 748	313, 317
Attar Singh v. State of U. P. (1959) Supp. (1) S.C.R. 928 : A. I. R. 1959 S.C. 564: (1959) S.C. J. 474	315
Attorney General of Alberta v. Attorney General of Canada A. I. R. 1939 P. C. 53	24
Attorney General v. Cotton Bank (1899) 2 Q. B. D. 153	32
Automatic Chemical works v. worker, A. I. R. 1961. S.C. 648	435
Automobile Transport v. State of Rajasthan, A. I. R. 1958 Raj. 114 A. I. R. 1962 S.C. 1406	540
A. V. V. J. Enhatswarm v. R. S. Badhwani 1962 1. S.C.R. 573 A. I. R. 1961 S.C. 1511	443, 46 6
Azimunissa v. Dy. Custodian, (1961) 2. S.C.R. 91, 163: A. I. R. 1961 S. C. 365,	214, 264

B

Babulal v. Collector of Customs, A. I. R. (1957) S.C. 877 : (1957) S.C.R. 1110	156
Babulal v. State of Bombay, A. I. R. 1960 S.C. 51 : (1960) 1 S.C.R. 605	106
Babulal v. State of Maharashtra, A. I. R. 1961 S.C. 886, 1961, (31) S. C. R. 423	187, 191, 192, 193, 194

Babul Chandra v Patna High Court	A I R 1954 S C 524 (1954) S C A 395	246
Babu Singh v State of U P	A I R 1965 S C 1467	403 404 405
		407 406
Babu Ram v Bai Nath Singh	(1962) Supp 3 S C R 124	217 263
Babu Rao v Bombay Housing Board	(1954) S C R 572 A I R 1954 S C 153	168
Bachan Dass v State	A I R 1952 S C 265	153
Bachittar v State of Punjab	A I R 1963 S C 395	341 519
Baigar Jute Mills v Eastern Railway	A I R 1958 S C 525	415
Bagalhot Cement Co v R K. Pathak	A I R 1963 S C 439	59
Bajinath v State of Bhopal	(1957) S C R 650 A I R 1957 S C 494	216
Baksh Singh v State of Punjab	A I R 1967 S C 752	413
Baladin v State of U P	AIR 1956 S 181	57 403
Balaji v I T O	AIR 1962 S C 123 (1962) 2 S C R 983	270
Balaji v State of Mysore	AIR 1963 S C 649 (1963) 2 S C A 1	170 171 172
Balakotiah v Union of India	(1958) S C R 1502 AIR 1958 S C 612	165 501
Baldeo Singh v I T Commissioner	A I R 1961 S C 736	444 445
Baldev Singh's case	(1960) 40 I I R 605	418 44
Baldota v Svr Mining works	A I R 1961 S C 100	426
Balkishna & sons v State of Madras	A I R 1961 S C 1153	92
Balvahand v King Emperor	42 Ind App 133	345
Balwan v Lakshmi	AIR 1960 S C 710 (1960) 3 S C R 91	437
Bala Krishna Udayar v Vasdeva Arjan	441 App 261	441
Balantrai v Nagrashna	(1961) 1 S C R 113 AIR 1960 S C 407	
Banaras Ice Factory v Its Workmen	(1957) S C R 143 AIR 1957 S C 168	
Banarsh Dass v Case Comour	A I R 1963 S C 1417	152
Banorshi Dass v Income Tax officer	A I R 1964 S C 174	31 32
Banarsi Dass v State of U P	(1956) S C A 702 AIR 1956 S C 520	176 177
Banars Parohad v Kailashpur	28 Ind App II (PC)	405
Baldev v State of Bihar	1957 S C R 995	165 501
Banarsi Dass v Wealth Tax Officer	A I R 1965 S C 135	41
Bandoada Gajapath Rao v State	A I R 1964 S C 1645	417 455
Bank of England v Vagliano Brothers	1891 A C 107	28
Banvarilal v State of Bihar	A I R 1961 S C 849 (1961) 1 S C R 33	51

Barium Chemical v. Company Law Board, 1966 S. C. 747, A. I. R. 1967 S. C. 244	110, 126, 183, 184, 211, 215, 226, 492
Barkya v. State of Bombay, A. I. R. 1960 S. C. 1203 : (1961) 1 S. C. R. 128	213
Barrows v. Jackson 364 U. S. 249	132
Baru Ram v. Smt. Parasanni, A. I. R. 1959 S. C. 99	425
Basant Kumar v. Eagle Rolling Mills, A. I. R. 1964 S. C. 1260	467
Basheshwar v. Commr. of I. T., A. I. R. 1959 S. C. 149 : (1959) S. C. J. 1207 : (1959) Suppl. (I) S. C. R. 528.	167 511
Bashbiruddin v. B. S. S. Majbisawaqif A. I. R. 1965 S. C. 1206	411
Bathina Ramakrishna v. State of Madras, (1952) S. C. R. 425	257
B. B. I. D. Suppl. Co. v. C. K. Bose. A. I. R. 1967 S. C. 361	478
B. B. Thakur v. State of Bombay A. I. R. 1960 S. C. 1203 1961. I. S. C. R. 123	311, 314
B. C. C. Mills v. B. Dasappa. A. I. R. 1960 S. C. 1352	447
B. D. & M/s. Co. v. L. K. Bose A. I. R. 1967 S. C. 331	496
Behram Khurshed v. State of Bombay, (1955) S. C. A. I. R. 1955 S. C. 123 : (1952-54) C. C. 28 : (1955) 1 S. C. R. 613	15, 115, 120, 126, 127, 132
Behralaindra v. State of Assam, A. I. R. 1966 S. C. 503	384
Bejoy Cotton Mills v. State of Ajmer, 1955 S. C. R. 752 A. I. R. 1955 S. C. 33	257
Bejoy Cotton Mills v. State of Orissa, A. I. R. 1961 S. C. 1438	261
Bengal Chemical & pharmaceutical works Ltd. Calcutta v. Their workmen 1959 (Supra) 2 S. C. R. 136	415
Bengal Immunity Co. v. State of Bihar, (1955) S. C. A. 1140 : (1955) 2 S. C. R. 603	15, 18, 26, 46, 133, 461, 506,
Bengal M. C. Mills v. Board of Revenue, A. I. R. 1964 S. C. 888	76
Betting v. Gillous (1882) Q. B. D. 308	192
Berubari Union, re (1960) 3 S. C. R. 250 A. I. R. 1960 S. C. 895	26, 330
B. Gajapathi Rao v. State of Andhra Pradesh A. I. R. 1964 S. C. 1645	94
Bhadur Singh v. State of Rajasthan, A. I. R. 1961 S. C. 1338	93
Bhadur Singh v. State of U. P. A. I. R. 1953 S. C. 394	40
Bhagwan Dass v. Union of India A. I. R. 1956 S. C. 176	509
Bhagwan v. State of Rajasthan, A. I. R. 1957 S. C. 589	409, 450
Bhagwan v. Ram Chand, A. I. R. 1966 S. C. 1967	496
Bhagwas Sarup v. State of Maharashtra A. I. R. 1962 S. C. 682.	463
Bhagwati Sharma v. State of U. P., A. I. R. 1961 S. C. 927	232

Bhairabendra v. State of Assam	1956 S. C. R. 303	404, 318
A. I. R. 1956 S. C. 503		
Bhaiyal Lal v. Hari Kishen Singh	A. I. R. 1965 S. C. 1557	429
Bhaiyalal Shukla v. State of Madhya Pradesh	1962 S. C. 981	145
Bhaja Heri v. State of Bombay	A. I. R. 1959 S. C. 356	91
Bhajahari v. State of West Bengal.		427
Bharat Bank v. Employees of Bharat Bank, (1950)	S. C. R. 459 : A. I. R. 1950 S. C. 188 (1950-51)	65,273
C. C. 255		
Bharat Fire and General Insurance Co. v. Income Tax Commissioner	A. I. R. 1934 S. C. 1800.	434
Bharik Chendra v. State of Assam,	A. I. R. 1958 S. C. 503	78
Bhatnagars v. Union of India,	A. I. R. 1957 S. C. 478 : (1957) S. C. R. 704 : (1957) S. C. R. 791.	267,397,534
Bhikaji Keshao Joshi v. Brij Lal Nand Lal,	1955-(2). S. C. R. 428.	467
Bhikaji v. State of M. P. (1955) 2	S. C. R. 589 : AIR 1955 S. C. 781.	120,127,136
Bhikasa Kamasa Kaabtriyy (Pvt) Ltd v. Union of India	A. I. R. 1963 S. C. 1591.	152
Bhinka v. Charan,	AIR 1959 S. C. 960 : (1959) Supp. (2) S. C. R. 798	25, 92
B'di Supply Co. v. Union of India, (1958)	S. C. R. 267 (1958) S. C. A. 560 A. I. R. 1956 S. C. 479	118, 130, 136, 143, 157,
Bihar State Co-op Bank v. I. T. Commr.	A. I. R. 1960 S. C. 781	430
Biobabati Devi v. Kumar Ramendra Naryana	73 I. A. 246	431
Biren Dutta v. Chief Commissioner of Tripura	A. I. R. 1965 S. C. 596	338
Bishwer Singh v. State of U. P.	A. I. R. 1965 S. C. 1569	161
Bishan Das v. State of Punjab,	A. I. R. 1961 S. C. 1570 (1963) 1 S. C. J. 405	313, 471, 481,
Bishamber Singh v. State of Orissa,	A. I. R. 1955 S. C. 1939	14, 26
Bishambar Singh v. State of Orissa	A. I. R. 1954 S. C. R. 842	25
Bisurdi Ashorj v. State of Bihar	A. I. R. 1951 S. C. 645	267
Bishamber v. State of U. P.,	A. I. R. 1966 S. C. 575	441
B. K. Bhandar v. Dhamagaon Municipality	A. I. R. 1966 S. C. 249	401, 434
B. K. Dev v. State of Orissa,	A. I. R. 1964 S. C. 1501	148
B. N. Nagranjan v. State of Mysore,	A. I. R. 1966 S. C. 1942	161,173, 179
Board of High School v. Ghanshyam	1962 Suppl 3 S.C.R. 31: A. I. R. 1962 S. C. 1110	431, 481,485
Board of High School & Intermediate Education v. Bagleslavar prasad and another	A. I. R. 1966 S.C.R. 475	487

Board of Revenue v. A P. Banthel A. I. R. 1959 S.C. 35	69
Board of Revenue v. Vidhya Wati 1962 Suppl. 3 S.C.R. 50	481, 482
Board of Trustees Tulbia College, State of Delhi, A. I. R. 1962 S. C. 458	147,209, 312 489
Bokaro v. State of Bihar A. I. R. 1963 S. C. 516	:
Bombay Dyeing Co. v. State of Bombay A. I. R. 1958 S. C. 323, 328 (1958) S. C. A. 254 : (1958) S. C. R. 1122 : (1958) 60 Bom L. R. 731 (S. C.)	210, 312, 315, 540
Bombay Union of Journalist and another v. State of Bombay 1964 (1) L. L. J. 351	468 47
Boota Mal v. Union of India A. I. R. 1968 S. C. 1716	
Bombay Presidency v. Bombay Trust Corporation Ltd. 63. Ind. App. 4	499
Brahma Prakash v. State of U. P., (1963) S. C. R. 1160	250, 381
Brij Bhuan v. State of U. P. A. I. R. 1957 S. C. 474 S. C. R. 605: (1951) S. C. J. 425: A. I. R. 1950 S. C. 129: (1950) 3 S. C. R. 650	428 485,496 260.
Brij Lal v. Union India A. I. R. 1964. S. C. 1643.	
Brij Mohan v. State A. I. R. 1950 S. C. 1.	
British India Corporation Ltd v. The collector Exise Allahabad, A. I. R. 1963. S. C. 104	148
British I. S. N. Co. v. Jasjit Singh, A. I. R. 1984 S. C. 1451., 1964 (2), S. C. J. 541.	211. 149
B. Shahla v. State of M. P. 1362 Supp (2) S. C. R. 257.	
Brindaban v. Election Commission A. I. R. 1965. S. C. 1892.	369,370
B. Satya Narayan v. enheterppyya. A.I.R. 1953 S. C. 194.	158
Buchaighan and Camati Co v. Venketiah A. I. R. 1961. S. C. 1282.	42,68,99.
Budhan v. State of Bihar. (1955) S. C. A. 173. AIR 1955 S. C. 191: (1955) 1 S. C. R. 752.	142,143, 152, 384
Burma Construction Co. v. State of Orissa, (1962) 2 S. C. D. 240: AIR 1962 S. C. 1320.	499,
Burmah Shell Refineries v. Their workmen A. I. R. 1961 S. C. 919.	434
Burmah Shell and Distributing Co. v. Belgaum Borough Municipality A. I. R. 1963. S. C. 906.	33,93 449
Burn Co v. Their Employees A. I. R. 1957. S. C. 38	
Burrakar Coal Co. v. Union of India, 1962. (1) S. C. R. 44: AIR 1961 S. C. 954: (1961) S. C. D. 432	17,26,27,315 118
Buthan v. State of Bihar. A. I. R. 1955 S. C. 191.	

C

Cantewell v. Comctient (1940) 310. U. S. 296.	253, 255 32
Canandian Eagle oil Co. v. R. 1966 A. C. 119.	501
Carl Still v. State of Bihar, AIR 1961 S. C. 1615	
C. B. Barucha v. Exise Commuioner A. I. R. 1954 S. C. 220	236

Cantonment Board v. Piarey Lal, A. I. R. 1966 S. C. 103, 1966 (3) S. C. R. 567	439, 501
C. C. S. Union's case. A. I. R. 1966 S. C. 990	443, 442,
Central Bank of India Ltd. v. Ram Narain, AIR 1955 S. C. 36.	108, 109
Central Bank of India v. Workmen, AIR 1930 S. C. 12 : 1(960) 1 S. C. R. 209	88, 128, 449
Central India Coalfields v. Ram Bilas, A. I. R. 1961 S. C. 1189	449
Champakla v. Union of India, A. I. R. 1964 S. C. 1851 1964. S. C. R. 190	178, 516, 519, 529, 162
Chanaalioharish v. State of Mysore A. I. R. 1965, S. C. 1293.	150, 173, 193
Chamabugwala Case. 1957 S. C. R. 874	541
Chandra Mohan v. State of U. P. A. I. R. S. C. 1966 1980.	133, 160, 366, 391, 536
Chander Kant v. Jasjit Singh. A. I. R. 1962, S. C. 204	234
Chandra Khare Kulandaivelu A. I. R. 1963 S. C. 185, 199.	394
Chandra Mohini v. Avitash Prasad, A. I. R. 1967, S. C. 583,	183
Chauni Lal v. S. S. M & M Co. Ltd. A. I. R. 1962, S. C. 1314.	394,
Chander Bhan v. State of Orissa, A. I. R. 1967, S. C. 767.	401, 473
Charnjit Lal v. Union of India 1950. S. C. R. 1869 A. I. R. 1951 S. C. 41	22, 121, 121, 142 156, 157, 209, 262
Charan Singh v. State of U. P. A. I. R. 1967 S. C. 522	452
Chaturbhuj v. Morreshwar, (1954) S. C. R. 816, A. I. R. 1954 S. C. 236.	539
Chaturbhai v. Union of India, AIR 1960 S. C. 424 : 1960) 2 S. C. R. 362	246, 269
Chaudhry Tika Ram v. State of U. P. A. I. R. 1956 S. C. 676	533
Chhotabhai v. State of M. P. A. I. R. 1953 S. C. 108 : (1953) S. C. R. 476.	503
Chhutauni v. State of U. P. A. I. R. 1957 S. C. 407	452
Chicago & G. T. R. Co. v. Wellwen (1982) 143 U. S. 33 128	128
Chief Inspector v. Thapar, A. I. R. 1961 S. C. 338 : (1962) 1 S. C. R. 9	433
Chief Inspector of Mines v. K. K. Thapar 1952	42, 43, 51
Chikharange Gowda v. Mysore State A. I. R. 1956 S. C. 731	92
Chimanla v. State of Maharashtra A. I. R. 1964 S. C. 666 759 : (1950) S. C. J. 571 : (1950-51) C. C. 64 : A. I. R. 1951 S. C. 118	127, 241, 244 244, 299
Chisholm v. Georgia (1792) 2 Dall 435.	98, 99
Chitralakha v. State of Mysore, A. I. R. (1964) S. C. 1823 : 1964 S. C. R. 363	159, 162, 172, 177, 339, 340

Chittor Motor Transport v. I. T. Officer A. I. R. 1966 S. C. 570	146, 150
Chiranjit Lal v. Union of India. (1950) S. C. R. 869 (1951) S. C. J. 29 : A. I. R. 1951 S. C. 41 : 53 Bom. L. R. 409: (1950-51) C. C. 10	1, 22, 25, 28 40 86, 127, 132; 144, 147, 264 121, 130, 142 156, 157, 209 262, 313, 208 488, 504, 511
Ch. T. Ramji etc. v. State of U.P., A. I. R. 1956, S.C. 676	315
Chuni Bhai v. Narayan Rao A. I. R. 1965 S. C. 1457	10, 19
Chokhani's Case, (1961) 43 I. T. R. 498	417, 445
Clerks etc. v. C. T. Co. A. I. R. 1957 S. C. 81	427
Coffman v. Breeze	130
Collector of Customs v. Mr. Shanti Lal, Cheotelal Lal A. I. R. 1966 S. C. 197	467
Collector of Customs v. Saupat Chetty A. I. R. 1962 S. C. 316	182, 2 19, 222 248, 249 263 268
Cleinprey Bhanaj Co v. Jirraj Baldev Sippingg & weav- ing Co. 1923 A. C. 480; 1923 A. I. R. P. C. 66	478
Colegrove v. Green (1946) 323 U. S. 549	131
Colling v. Hertfordshire county Council 1947 K. B. 538	64
Collector of customs v. Celautte 1962 S. C. R. 563	488
Collector of Customs v. East Indian Commercial Co. A. I. R. 1963 S. C. 1124 : (1963) 2 S. C. R. 563	473
Collector of Malabar v. Hajee Ebrahim, (1958) S. C. A. 398 : (1957) S. C. R. 970 : A. I. R. 1957 S. C. 588	263, 280, 286 289, 293, 298
Collector of Monghyr v. Keshav, A. I. R. 1962 S. C. 1964 : (1963) S. C. R. 98	31
Commr. v. Gardhendas 1952 S. C. R. 135	500
Collector v. Day 1870 11 wall 113	98
Commissioner of Agricultural Income Tax v. Keshab Chandra. A. I. R. 1950 S. C. 265 S. C. J. 1069 : (1959) Supp. (2) S. C. R. 8	125, 313, 322 327
Commr. Ahmedabad v. Lakhi Ram Das A. I. R. 1967 S. C. 333	418
Commr. v. Lakshmindra, A. I. R. 1952 S. C. 282 (1954) S. C. R. 1005	86, 200, 305, 306, 307
Commissioner v. L. T. S. Muthi 1954 S. C. R. 1023	309
Commr. v. T. L. Swaniar A. I. R. 1959 S. C. 287	275
Commr. v. National Finance Ltd, A. I. R. 1963 S. C. 835	418, 445, 446

Commissioner of Inland Revenue v. South Gerojia Co. Ltd. (19'6) 37 Tax cases	725	29
Commr. of I.T. v. Indo Mercantile Bank Ltd. A.I.R. 1959 S.C. 713.		
Commr of I.T. v. Karam Chand A.I.R. S.C. 1175		31, 32
Commr of I.T. v. M.P. & Co. A.I.R. 1960 S.C. 1232		70
Commr. of I.T. v. Patel & Co., A.I.R. 1960 S.C. 278		383
Commr I. T. v. Sade Devi, A. I. R. 1957. S. C. 832.		19
Commr of I. T. v. M/S. Swadeshi Cotton Flour Mills A. I. R. 1964 S. C. R. 1760.		71
Commr of Income Tax v. Sardar Lukhmir Singh A. I. R. 1963, S. C. 1394.		166
Commr of I. T. v. R. W. I. Turf Club, (1954) S. C. R. 389.		26
Commr of I. T. v. South India Pictures. A. I. R. 1956 S. C. 492.		27, 39
Commr of I. T. v. Tej Singh A. I. R. 1950 S. C. 352.		29
Commr of Income Tax Bombay v. M/S Filmistan		60
Commr. of Police v. Gordhands, (1252) S. C. R. 135 : AIR 1952 S. C. 16		48
Commercial Bank v. Bhagwan Dass. A. I. R. 1965, S.C. 1143.		438
Cooki Vaughan (1838) 150 E. R. 1346.		
Cooverjee v. Excise Commissioner & Others, (1954) S. C. R. 873		60
	245, 247, 268, 269, 270	
Corporation of Calcutte v. siberty cience A. I. R. 1965, S. C. 1108 ol.		216
Case v. New Hanesphire (1954) 312. U. S. 569.		192
Crompton Parkins on v. Workmen, AIR 1959 S. C. 1089: (1959) Supp. (2) S. C. R. 936.		441
Crown Aluminium Works v. Workmen, A. I. R. 1958 S. C. 30 : (1958) S. C. R. 651		100, 325
C. Tika Manjit v. the State of U. P. 1956. S. C. R. 693 A. I. R. 1956 S. C. 776.		199
C. S. Bowjee v. State of Budlua Pradesh A. I. R. 1964. S. C. 962.		52, 491, 492
C. S. D. Swami v. the State, A. I. R. 1960. S. C. 7.		401
Curtis v. Stovuie (1882) 22 Q. B. D. 512		29
Calcutta Gas Co. (Pvt) Ltd. v. State of West of Bengal A. I. R. 1961. S. C. 244		489
Customs Collector Bombay v. Shanti Lal & Co. A. I. R. 1966 S. C. 199.		439
Dahyadahi v. State of Gujarat. A. I. R 1964, S. C. 1563.		430
Daji Sahab v. Shankar Rao. A. I. R. 1956. S. C. 29 (1955) 2 S. C. R. 572		389
Dakheswari Cotton Mills. 1955, S. C. R. 945.		444, 445
Dalbir Singh v. State of Punjab A. I. R. 1963, S. C. 1106. 1962 S. . 25.		448
	189, 256, 321	

(1963) 2 S C R 73			165, 233
Dayavati v Inderjit A. I R 1966 S C 1423			39 44 45
D C Pvt Ltd v State of Saurashtra A I R 1957 S C 264			396
Deep Chand v State of U P A I R. 1959 S C 648 , (1959)			537
Deep Chand v State of Rajasthan A I R. 1961 S C 1527			408
Delhi Cloth General Mills v Harnam Singh A I R. 1955 S C 590			87
Delhi Laws Act in re (1951) 2 S C R 747 A I R 1951 S C 332 (1951) S C J 527	331	349	534
Deputy Custodian v Official Receiver A I R. 1965 S C 951			43
Dalmia Cement Co v Commr of I T AIR 1958 S C 816			221
Dalmia v Delhi Administration A I R 1962 S C. 182			278
Davji v L. I C. A I R 1966 S C 135			34
Daryao v State of U P A. I R. 1961 S C 1457 (1962) 1 S C R 574 510 511			
Dasratha v State of A P A I R 1961 S C 564 (1961) 2 S C R 931		82	130
Dastagir v State of Madras A I R 1960 S C 758 (1960) 3 S C R. 116			279
Dattatraya Woreshwar v The State of Bombay & others (1952) S C R 612 A I R 1952 S C 181 A I R 1853 Bom 311	299	335	339
	334	345	
Davindra Partap v State of U P A I R. 1962 & S C R 315			277
Dahya Lal v Lal Rasul Mohammed, Abdul Rahim an others			501
Daya v Joint Chief Controller A I R 1962 S C. 1796			
Devadasan v Union of India A I R. 1964 S C 179	163	163	179
Devata Parsad v Chief Justice A I R 1962 S C. 201			225
Devaraja v State of Madras A I R 1954 S C 282			306
Devendra v State of U P A I R 1952 S C 1334 (1962) Supp (1) S C R 335			395 526
Devidas v Shri Shallappa A I R 1961 S C. 1280			431
Devi Lal v Sales Tax officer A I R 1965 S C 1158			470
Dhannjay v M S L Uppadaya A I R 1960 S C 745		435	453
Dhakeshwari Cotton Mills Ltd v Commr of Income Tax (1955) 1 S C P 941			418 427
Dharangadhara Chemical Works v State of Saurashtra (1956) S C R 152 A I R 1957 S C 264			64
Dharindra Kumar v Superintendent A I R 1954 S C 424			167
Dharman v State of Punjab A I R 1957 S C 324			452
Dharaugdhara Chemical Work Ltd v State of Saurashtra A I R 1957 S C 264			501
Dhrendra Kumar v Supdt. A I R 1954 S C 424			158
Dhuurcha v Chaman Singh, A I R. 1959 S C 1959			95 97

Director of Rationing v. Corporation of Calcutta, A. I. R. 1960 S. C. 1335.	46
Diwan Sugar & General Mills v. Union of India, A. I. R. 1959 S. C. 626.	241
D. C. Board Calcutta v. Jaffor Imani, A. I. R. 1966 S. C. 483.	498
D. K. Nabbirajaab v. State of Mysore, A. I. R. 1952 339.	128,198
D. P. Joshi v. State of M. P. A. I. R. 1955 S. C. 344.	138,153,159 167,171,172
D. N. Banerjee v. P. R. Mukerjee (1953) S. C. R. 302.	48
Dorchey v. Kamfas (1926) 272. U. S. 306.	198
D. S. Garewal v. State of Punjab A. I. R. 1959. S. C. 512	83,524
D. M. Nabirajie v. State of Mysore, A. I. R. 1952. S. C. 339,	311
D'Souza v. State of Bombay A. I. R. 1965. 531 (1956 S. C. R. 382	295,31
D. R. Board v. Jaffor. Imman. A. I. R. 1965. S. C. 282.	495.
Duli Chand v. Income Tax Commissior A. I. R. 1954 S. C. 354	83
Durapatti Venkater T. Ramaswany. & Co. A. I. R. 1963 S. C. 881	387
Durga Parsad v. Benaray Bench, Ltd. A. I. R. 1964, S. C. 1322,	391
Durgashankar v. Reghwaraj (1955) S. C. R. 267.	421
Duragaah Committe v. Hussain Ali A. I. R. 1961. S. C. 1402 (1961) II S. C. A. 171 (1962) (1962) S. C. R. 383	214,285,304, 305,309
Dwarka v. State of Bihar, A. I. R. 1952 S. C. 249	124,310, 448,
Dwarkadas v. Sholapur Spining Co 1954 S. C. R. 674 1954 S. C. A. 132 A. I. R. 1954. S. C. 119.	124,128 135,182,209,310 316,461
Dwarka Nath v. Income Tax Officer. A. I. R. 1966. S. C. 81.	466,480,481
Dwarka Prasad v. State of U. P. (1954) S. C. R. 803 A. I. R. 1954 S. C. 224.	246, 248, 269, 270

E

East India Commercial Co. v. Collector of Customs A. I. R. 1963. S. C. 328. 1962 S. R. 1893.	497,502
East Indian Tobacco Co. v. State of Andhra Pardesh A. I. R. 1962 S. C. 1733.	75
East India Dwellwjs Co. Ltd v. Fuiglury Boroughs Council 1952 A. C. 109.	41
East man photosaplic Material Co. v. Councptroller General of Patents, Desinus and Trede Marhs 1883 A. C. 571	15
Ebrahim Aboocbaker v. Tek Chand A. I. R. 1953. S. C. 288.	52

Ebrahim Wazir v. State of Bombay and others, (1954) S. C. R. 933 (1955) S. C. A. 563 : A. I. R. 1954 S. C. 229	242, 246, 261, 273, 275, 203, 205, 206, 504
E. D. Sassoon and Co. Ltd. v. Commissioner of Income Tax Bombay City, A. I. R. 1954 S. C. 470	49
Edward v. State of W. B., A. I. R. 1958 S. C. 956	142
Edward Mills v. State of Ajmer, A. I. R. 1955 S. C. 25 : 1955 S. C. A. 24 (1955) S. C. R. 735	71
Election Commission v. Saka Venkata (1953) S. C. R. 1145 A. I. R. 1953 S. C. 210	369, 382, 383, 487
Empress Mills v. Municipal Committee, A. I. R. 1958 S. C. 341	71, 73
Engineering Mazdoor Sabha v. Hind Cycles Ltd. A. I. R. 1963 S. C. 874	424 435
Engineering College Chitrlekha v. State of Mysore, A. I. R. 1964 S. C. 1825	533
Eslingbayi Eleko v. Officer Administiring Govt. of Nigeria, 1931 A. C. 662 A. I. R. 1931 P. C. 248	493
Express News papers v. Sonyafulu, A. I. R. 1964 S. C. 278	53
Express Newspaper v. Union of India, A. I. R. 1958 S.C. 578 (1959) S. C. R. 12	100, 122, 141, 147, 167, 184, 185, 228, 240, 241, 267, 324, 325, 326, 327, 355

F

Fazlul Rabbi v. State of W. B., A. I. R. 1966 S. C. 1722	58
Fedco v. Bilgrami, A. I. R. 1960 S. C. 415 (1960 S. C. J. 235 : (1960) 2 S. C. R. 408	269, 270, 315, 494
Feedral Court in Kapil Deo Singh v. The King. A. I. R. 1950 S. C. 80	450
Firm Bansidhar v. State of Rajasthan, A. I. R. 1967 S. C. 40	104, 221
Firm Ghulam Hussain v. State of Rajasthan, A. I. R. 1963 S. C. 389	533
Fleming v. Rhoades (1947) 331 U. S. 47	132
F. N. Balsara v. State, A. I. R. 1953 S. C. 318	167
Freiner v. New York (1951) 343 U. S. 315	192
French Motor Car Co. Ltd. v. Workmen 1963 2 S. C. R. 16	325

G

Gaddevenkateswara Rao v. Govt. of Andhra Pradesh, A. I. R. 1966 S. C. 828	489
Gajapati v. State of Orissa (1954) S. C. R. 1 A. I. R. 1953 S. C. 375	135
Gajapati Narayan Deo v. State of Andhra, 1959 Supp. 1 S. C. R. 319	36
Gajendra Narain Singh v. Joshi Mal Prashad 1954 S. C. 577	429

G. A. Kamarao v. State of Andhra Pradesh, A. I. R. 1966 S. C. 564	177
Ganapati v. State of Ajmer (1955) S. C. A. 252 1955 (1) S. C. R. 1065 1955 S. C. 183	210, 220, 225, 270, 384
Ganapati v. State of Bihar, A. I. R. 1955 S. C. 188	
Ganpati Keshavram Reddy v. Nafisul Hasan and the State of U. P., A. I. R. 1954 S. C. 636 1954 S. C. R. 36	287, 288, 294, 298
Gangadhar v. State of Bombay, A. I. R. 1961 S. C. 238	314
Ganeshi Ram v. District Magistrate, A. I. R. 1967 S. C. 538	399
Ganga Pratap v. Allahabad Bank, A. I. R. 1958 S. C. 293 (1958) S. C. R. 1150	46
Ganga Ram v. Tezpur Fishery Society (1957) S. C. R. 479 A. I. R. 1957 S. C. 377	92
Garikapathi v. N. Subia Chowdhary, A. I. R. 1957 S. C. 540	393
Gurcharan Singh v. State of Punjab, A. I. R. 1963 S. C. 337	431
Gursabai v. I. T. Commissioner, A. I. R. 1963 S. C. 1062	426
Guru Gobind Basu v. Shankri Parshad, A. I. R. 1964 S. C. 252	366, 367, 368
Gballo Mal v. State of Madras (1959) S. C. R. 1424 : A. I. R. 1959 S. C. 65	335, 340
Gobind Prasad v. State of Bihar, A. I. R. 1961 S. C. 1711	426
Ghanshyam Dass v. Regional Assistant Commissioner Sale Tax, A. I. R. 1964 S. C. 766	70, 162
Ghosh v. Joseph, A. I. R. 1963 S. C. 812 (1963) 2 S. C. A. 117	189, 192, 193, 194, 259, 515, 530
Ghaneshyam Dass v. Regional Assistant Commissioner, A. I. R. 1964 S. C. 766	17
Gnamarbaing Walla v. Union of India, 1957 S. C. R. 930	19
Ghero Lal v. Mahadeo Dass, A. I. R. 1959 S. C. 781	397
Ghouse v. State of Andhra, A. I. R. 1957 S. C. 246 (1957) S. C. R. 414	131
G. H. Khosla v. Dy. Commissioner of Commercial Taxes A. I. R. 1966 S. C. 1216	438
Gian Chand v. State of Punjab A. I. R. 1962 S. C. 499	90
Gian Singh v. State of Punjab, A. I. R. 1962 S. C. 219	389
Girdhari Lal v. State of Gujarat, A. I. R. 1966 S. C. 14	400
Glass C. I. U. Association v. Union of India, 1962 1 S. C. R. 1862	315
G. K. Reddy v. Nafesul Hussan, A. I. R. 1954 S. C. 636	354, 357
G. M. Southern Railway v. Rangachari, A. I. R. 1962 S. C. 36	177
G. N. Majumdar v. State of Bombay, 1961 1 S. C. R. 1943	314, 315

TABLE OF CASES

723

G. Tatayao v. Jagcpathiraja, A. I. R. 1967, S. C. 649	428
Godavari v. State of Bombay, (1953) S. C. R. 210 A. I. R. 1953 S. C. 52	299
Godavari v. State of Maharashtra, A. I. R. 1964 S. C. 1128	337, 414
Gopalan v. State of Bombay, A. I. R. 1950 S. C. 27	11
Gopalan v. State of Madras, (1950) S. C. R. 88 A. I. R. 1950 S. C. 27	201, 203, 205, 10, 12, 19, 21, 24, 27, 40, 97, 117, 120, 121, 126, 127, 134, 170, 131, 182, 183, 200, 247, 259, 282, 283, 234, 285, 286, 289, 290, 291, 292, 293, 295, 298, 300, 301, 302, 303, 318, 553
Gopal Dass v. Union of India, (1955) 1 S. C. R. 773 A. I. R. 1955 S. C. 1	510
Gopal Narain v. State of U. P., A. I. R. 1984 S. C. 370	148, 163, 210
Gopal Sugar Industries v. Sales Tax Officer, A. I. R. 1967 S. C. 549	227
Gopal Ranta Case, A. I. R. 1962 S. C. 1513	472
Gopi Kishore Parsad A. I. R. 1960 S. C. 689	520
Govindan Selliappah Nayar v. Punch Banda Mudayahe 1959 A. C. 514	20
Govindlalji v. State of Rajasthan A. I. R. 1963 S.C. 1638	82
G. P. Sonawala v. Eastern Cotton Co., A. I. R. 1958 S.C. 713	80
Grant v. State of Bihar A. I. R. 1966 S.C. 237	399
G. S. Bansal v. Delhi Administration, A. I. R. 1953. S.C. 1579	453
G. Tatayya v. Jagapathirajan A. I. R. 1967. S.C. 649	447
Grey v. Person (1857) 6 H.L.C. 61 P. 106	13
Guasai Saigal v. Commr of I. T. Punjab A. I. R. 1961 S.C. 1062	32
Gujarat University v. Shri Krishana A. I. R. 1963 S.C. 703	23
Gulab Chand v. State of Gujarat. A. I. R. 1965 S.C. 453	470
Gullu Road Transport Corporation, A. I. R. 1959. S.C.R. 318	316, 484
Gurbachan v. State of Bombay (1952) S.C.R. 737 A.I.R. 1952 S.C. 221	153, 242, 243, 260, 261, 203, 204,
Gurbaksh Singh v. State of Punjab. A. I. R. 1967 S.C. 502	389, 416
Gurdev Singh v. State of Punjab. A. I. R. 1964 S.C. 1585	502, 523
Gumshai v. I. T. Commr. A. I. R. 1963 S.C. 1062	449

Gurnmalpura Taggina Matendo v. Veravera A. I. R. 1959 SCJ 77	84
Gurwaswami v. State of Mysore A. 1954 SC 592.	14

H

Habib v. Hyderabad. 71 (1954 SCR 475. A. I. R. 1953 S. C. 237	124, 125
Hage v. Committee (1942) 307 U. S. 496	192
Hamdard Dawakhana v. Union of India (1960) 1 S.C. A. 314 A. I. R. 1960 SC 5547	124, 185, 229 243, 244, 245 249, 250, 252, 258, 293, 297, 387, 534.
Hamdard Dwakhana v. Union of India, A. I. R. 1965 S.C. 1167	388, 317, 486
Hans Kumar v. Union of India A. I. R. 1958 CC 947	383
Hans Muller v. Superintendent A. I. R. 1958 SC 166 (1955 1 S.C. R. 1284	253
Hanumantha Rao v. State of A. P. A. I. R. 1957 SC 927	142
Hanumant v. State of M. P. A. I. R. 1952 S. C. 343 : S. C. J. 509 : (1952) S.C. R. 109	451
Haraudow v. George (1935) 292 U. S. 447	131
Hari v. Dy. C. of Police, (1956 S.C. A. 1074 (1061) : (1956) S. C. R. 507 A. I. R. 1956 S. C. 559	201, 202, 203, 206, 260.
Hari Chand Saida v. Mizo District Council A. I. R. 1967 S. C. 829	234, 244, 260, 262.
Hari Dass v. Commissioner of Police A. I. R. 1958 S. C. 559	39
Hari Dass v. State West Bengal A. I. R. 1964 S.C. 903	401
Hari Khemu v. Deputy Commissioner 1965 S. C. R. 506.	201, 204, 260.
Hari Krishna v. Union of India A. I. R. 1966 S.C. 619	162
Hari Lal v. State of U. P., A. I. R. 1954 S. C. 743	381
Harinagar Sugar Mills v. Shyam Sunder A. I. R. 1961 S. C. 1669 (1962) 2 S. C. R.	339, 332, 423, 486
Harinder v. Karnail, (1957) S. C. R. 208 : A. I. R. 1957 S. C. 271	
Hari Shankar v. State of M. P. 1955 1 S. C. R. 380	53
Haripapa v. State of W. B. (1958) S. C. R. 639 S.C. 757	404, 406, 450.
Harish Chahder v. Tarlok Nath A. I. R. 1956 S. C. 404 A. J. R. 1957 S. C. 444	70 93
Hariesh v. Trilki (1957) S. C. R. 370 : A. I. R. 1957 S. C. 444	64, 67, 93.
Hariesh Chahder v. State of M. P., A. I. R. 1965 S.C. 932	247
Hari Prasada v. State A. I. R. 1951 S. C. 205	16
Hari Shankar v. State of M.P. (1954) S. C. A. 824; (1964) S. C. J. 637 : S. C. R. 380 : A. I. R. S. C. 465 (1955) S. C. R. 380	130, 145 248, 249: 264, 266, 263
Hariprasades v. Shaughnessy, 1952, 342 U. S. 580	251

Hari Vishnu Kanath v Ahmed Ishaqne 1955 1 S. C. R. 1104 : A. I. R. 1955 S. C 233	70
Hari Vishnu v Syed Ahmad and others (1955) 1 S.C.R. 1104 (1955) S C A. 105 (1955) S C J. 267: A. I. R. 1955 S C 233	129, 384, 476, 477
Hari Kishan v. State of Maharashtra. A. I R 1962 S C.911	295
Harnam Dass v State of Uttar Pradesh 1962 2 S C R 487	189
Harnam Singh v. R. T. A. Calcutta Region A I R 1954 S C. 190	155, 159
Harnam Singh v. R. T. A and ors. (1954) S C R 371 (1954) S C A. 47 A I R 1954 S C 190 (1952 54) 2 C C. 129	133, 225, 226, 230
Harnarain v. Badri A I R 1963 S C 1558	419
Hartwell v. U. P. Govt. A I R. 1957 S C. 886 (1958) S C.A. 1	521, 523
Hata Singh v. State of M.B. A. I. R. 1953 S C 468	410
Hate Singh v. State of M. P. A. I R. 1953 M P. 247	279
Hathesing Mfg. Co. v. Union of India, A I R 1960 S C. 931. (1960) 3 S C R. 528	225, 226
Hazari Mal v I. T. Officer 1963 S C 20	30
H. C. Bajpai v. Triloki Singh A I R. 1951 S C 449	78
H. C. Sen Gupta v The Speaker 1956 C. W N. 568	104
Hedge and others v. Mahibharjun Bhavanappa Tribunal. A. I. R. 1960 S C. 137	501
Hem Raj v. State of Ajmer (1954) S C.R. 1133 A. I. R. 1954 S C 462	418
Heydons case (1584) 3 Co. Rep 7	15
H. G. Mills v. Their Employees, A I R. 1957 S.C. 376	397
High Court v. Amal Kumar, A. I R. 1962 S C 1704 (1962) 2 S.C.A. 646	87, 160, 518, 519
Hum mangu v. Jayati Parkash, A I R 1964 S C. 1636	468
Himmatlal v. State of M P. and ors., (1955) S C R 1122 (1954) S C. J. 445. (1954) S C A. 654 : A. I. R. 1954 S C.A. 654 A. I R 1954 S.C. 403 (1952-54) 2 C.C. 242	270, 506, 509
Hindustan Construction Co., v. S. Gantoude A. I. R. 1965 S.C. 1318	74
Hindustan Ideal Insurance Co. v Life Insurance Corporation A. I R. 1953 S. C. 1087	38
Hindustan Antibiotics Ltd v. Workmen A. I. R. 1967 S. C. 948	325, 326, 416
Hindustan Times Ltd New Delhi v. Their Workmen 1964 1 S.C R. A.I.R. 1963 S C. 1938	325, 443
Hira Devi v. District Board, A I.R. 1954 743	257
H. N. Righind v. State of Delhi A.I.R. 1955 S C. 196	30
Hodgson v. L. Lalaman 1943 LK.B 15	411

Hoshjar Singh v Gurbachan Singh A.I.R. 1962 S.C. 1089	257, 381
House of Lords in Ridge v. Baldwin 1964 A.C. 40	494
H. R. Deka v. State of Madhya Pradesh A.I.R. 19 3 S. C. 221	38
Hukum Chand v. Union of India (1959) 1 S.C.A. 348 : A.I.R. 1959 S.C. 536	520
Huturi Gowder v. Keabdar and Co. A.I.R. 1964 S.C. 577	32

I

Ibrahim v. R.T.A. (1953) S.C.R. 210, A.I.R. 1953 S.C. 79 : (1952-54) 2 S.C. 217,	225, 231, 136
Ibrahim v. State of Rajasthan A.I.R. 1965 S. C. 619	112
I. C. Golak Nath's Writ Petition No. 202	551, 552, 553, 554, 555, 556, 557, 558
I. G. N. Ry. v. Their Workmen, A.I.R. 1960 S. C. 219 (1960 2 S. C. R. 1	415
Immunity Co. v. State of Bihar (1955) S. C. R. 603	131
Income Tax Bombay v. Amrit Lal Bhg' Laf 1959 S.C. 718	472
Income tax Commissioner v. Ahmed Bhai Umar Bhai and Co. A.I.R. 1950 S. C. 184	25
Income Tax Officer v. Bhagwan Dass, A. I. R. 1965 S.C. 342	63
Income Tax Officer v. Short bros. A.I.R. 1967 S.C. 31	442
Inderjit v. State of Delhi, A.I.R. 1953 Punjab-52	298
Inder Singh v. State of Rajasthan, A. I. R. 1954 Raj, 185 (1957) S. C. R. 605, A. I. R. 1957 S. C. 570	221, 263
Indian Aluminium Co. Ltd, v. Commr. of I. T. 1962 S. C. R. 1619	417, 445
Indian General Insurance Co. v. Capt. Inder Singh, A. I. R. 1959 S. C. 1331	15
Indian Iron and Steel Co. v. Workmen, A. I. R. 1957 S. C. 130 (1957) S. C. R. 667	429, 443
Indian Mollases Co. v. I. T. Commr. A. I. R. 1959 S. C. 1049	53, 430
Indira Sohan Lal v. Custodian, A. I. R. 1956 S. C. 78 (1955) 2 S. C. R. 1117	85, 436
Indian Clive Steam Navigation Co. Jasjit Singh A. I. R. 1964 S. C. 1140	426
Indo China Steam Navigation Co. v. Union of India, A. I. R. 1954 S. C. 1140	422, 423
In re Article 143, Constitution of India A. I. R. 1965 S. C. 745	350, 351, 352, 353, 356, 357, 359, 360, 362, 454, 473
In re Berubari Union, (1960) 3 S. C. R. 250 : A. I. R. 1960 S. C. 645	103, 104, 105, 106, 459

In re Constitution of India A. I. R. 1935 S. C. 745	186, 187
In re Delhi Laws Act 1912 (1951) S. C. R. 747 (1950-51) C. C. 328	534, 535 507
I. T. Commr. v. Benoy. A. I. R. 1957 S. C. 768	67
I. T. Commr. v. Bhogi Lal Maher Chand A. I. R. 1954 S. C. 155	79
I. T. Commr v. Bharani Jya Coal Co. A. I. R. 1959 S. C. 254	29
I. T. Commr Elphin stone Mills A. I. R. 1960 S. C. 1016	28
I. T. Commr. v. Gajapathy	15
I. T. Commr. v. I. Bank A. I. R. 1965 S. C. 1473	433
I. T. Commr. v. Kanara Bank A. I. R. 1967 S. C. 417	28
I. T. Commr. v. Khetan Makanji S & W Co. A. I. R. 1960 S. C. 1923	83
I. T. Commr. v. L. W. Russel A. I. R. 1965 S. C.	393
I. T. Commr v. Patel and Co. A.I.R. 1960 S. C. 279	34
I. T. Commr. v. Shazaud Nand and Sons A. I. R. 1966 S. C. 1342	41, 96 155
I. T. Commr. v. Sadra Devi, A. I. R. 1957 S. C. 382	111, 203, 205
I. T. Commr. v. Teja Singh, A. I. R. 1959 S. C. 353	
I. T. O. v. D. B. R. Mills, 1961 S. C. 540	
Ithar Ahmad v. Union of India, A. I. R. 1962 S. C. 1952 : (1963) 1 S. C. A. 130	

J

J. A. Cleive v. A. K. Chatterjee, A. I. R. 1959 S. C. 597	398
Jadav v. H.P. Admn., A. I. R. 1963 S. C. 1006 : (1960) 3 S. C. R. 755	314, 316
Jagdish Chandi v. Kajanie Traders, A. I. R. 1964 S. C. 1882	34
Jagan Nath v. Harihar, A. I. R. 1955-C	30
Jagan Nath Homy Parsad v. State of Maharashtra, A. I. R. 1964 S. C. 708	152
Jagan Nath v. State of Orissa, (1954) S. C. A. 569 : A.I. R. 1951 S. C. 400 (1952-54) 2 C. C. 207: (1954) S. C. R. 1046	246, 248
Jagan Nath v. State of U. P., A. I. R. 1962 S. C. 1245 : (1962) 1 S. C. R. 151	522
Jagan Nath v. State of U. P., A. I. R. 1962 S. C. 1563	41, 76
Jagir Kaur v. Jaswant Singh, A. I. R. 1963 S. C. 1523	89
Jagir Singh Kartar v. Singh, A.I.R. 1966 S.C. 773	437
Jagdish Parsad v. State of Mysore, A. I. R. 1961 S. C. 1070	521
Jagdish Mitter v. Union of India, A. I. R. 1964 S. C. 449	517
Jagdish Prashad v. State of M. P., A. I. R. 1961 S. C. 1070	520
Jai Engg. Works v. Union of India, A. I. R. 1963 S. C. 488	82

Jai Lal v Delhi Administration A I R 1962 S C 1781	46
James v Cartery 1114 IKB 51	478
James v Commonwealth of Australia 1936 A C. 578	29
Jairam v Union of India (1954) S C A 1251 A I R 1954 S C 584	523
Jammuna Prasad v Mukhariya other 1955(1) S C R 198	169
Janardjan Reddy v The State A I R 1951 S C 127 (1950) S C R 940	420
Janmohd v State of Gujarat A I R 1968 S C 385	162, 202, 430
	535
Jaswant Sugar Mills v Lakshmi Chand A I R 1963 S C 677	417, 421, 424
	425
Jaswant Rai v State of Bombay A I R 1950 S C 579	41
Jayat Singh v Commissioner A I R. 1962 S C 21	209
Jayat Singh G v State of Gujarat A I R 1962 S C 21 (1962) Supp 2 S C R 411	210, 222
Jaurishah v D P Johunjhunwala A I R 1967 S C 107	112
Jawal Ram v State of Pepsu A I R 1962 S C 2246	276
Jaucublar Reddy v State of Hyderabad A I R. 1951 S C 217	257
Javali v State of Mysore (1962) (1) L L T 134	188
Jayanti Lal v Rama A I R 1964 S C 646	330 333 334
J C Mills v State of U P A I R 1963 S C. 414, 1962 Supp 1 S C R 282	65
J Cotton mills v Commissioner I T & E P Tax A I R 1959 S C 275	429 432
Jeejeebhoy v Asst Collector Thana A I R 1965 S C 1096	71, 316
	535
Jetha Nand v State of Delhi 1960 S C J 68	
Jethanand v State of U P A I R 1961 S C 794(1960) 1 S C R 755 (1960) S C J	383 393
Jialal v Delhi Administration A I R 1962 S C 1781	166
Jindathappa v Sharma A I R 1961 S C 1523	246, 262
J K Cotton spinning and weaving mills co Ltd v The Sales Tax Officer Kanpur A I R 1965 S C 1310	490
J K Cotton Spinning and weaving mills v L A Tribunal of India A I R. 1964 S C 737	70
J K Gas plant M H Co v Emperor 1947 F C R 141	335
J K Mills & Steel Co v Mazdoor Union (1955) 2 S C R 1325 (1956) S C A 843 A I R 1956 S C 231	66
J K Mills v State of U P A I R 1961 S C 1534 (1962) 2 S C R 1	534
J K Trust v Commr of I T (1958) S C R 65 A I R 1957 S C 846	86 210
J N Mansinhani v State of Saurashtra C A 233 decided on 20 4 65	316
John Donald v Chief Inspector A I R. 1962 S C 1352	61
John v State of T C (1955) S C A 85 A I R 1955 S C 160 (1955) S C J 221 (1955) 1 S C R 1011	219 531
Joseph v Narayan A I R 1964 S C 1552	278
Joseph v Reserve Bank of India 1962 (3) S C R 632	247

Joshi v. State of M.B. (1955) S.C.A. 511 : A.I.R. 1955 S.C. 334: (1955) 1 S.C.R. 1215	144
Joshi Parsad v. Union Territory of Delhi A.I.R. 1951 S.C. 1602	167
J.P. Sharma v. State of U.P. A.I.R. 1961 S.C. 1245	166
Jugal Kishore v. Raw Cotton Co., A.I.R. 1955 S.C. 376	10, 20, 43
Jurman v. State of Punjab, A.I.R. 1957 S.C. 969	453
Jwarhar Lal v. State of Rajasthan A. I. R. 1966 S. C. 764	533, 535
J. Y Kundalavao v. State of Andhra Pradesh, A. I. R. 1961 S. C. 82	166
Jyoti Parkash v. Chief Justice Calcutta High Court, A. I. R. 1965 S. C. 1961	82

K

Kailash Chandra v. Union of India, A. I. R. 1961 S. C. 1346	82
Kailash Nath v. State of U. P., A. I. R. 1957 S. C. 790	233, 507
Kaljit Gajpati Singh v. State of Ajmer, A. I. R. 1955 S. C. 188	233
Kalawati v. State of H. P. A. I. R. 1953 S. C. 131 (1953) S. C. J. 144: (1953) S. C. R. 534	274, 275, 278, 279, 406
Kalidas v. State of Bombay, A. I. R. 1955 S. C. 62	1491
Kalyan Pepsu Co-operative Bank Ltd. v. Dhulha bibi, A. I. R. 1966 S. C. 1472	468
Kalyan Singh v. State of U. P., A. I. R. 1962 S. C. 1183 (1963) 1 S. C. J. 50	399, 485, 489
Kamani Metals v. Workmen, A. I. R. 1967 S. C. 1179	443
Kamla v. Bachulal, A. I. R. 1957 S. C. 434: (1957) S. C. R. 452	42
Kasibai v. Mahadu, A. I. R. 1965 S. C. 503	429
Kamakhyia v. Collector, (1956) S. C. A. 494: A. I. R. 494: A. I. R. 1956: S. C. 63: (1955) 2 S. C. R. S. C. 988	220
Kameshwar v. State of Bihar, 1962 S. C. R. 369, A.I.R. 1962 S. C. 1166	67, 189, 190, 192, 193, 194, 249, 321, 515, 525
K. Anadha v. Chief Secretary of Govt. Madras	188
Kanaya Lal v. I. T. I. Potddar, A. I. R. 1958 S. C. 444	274
Kanwar Singh v. Delhi Administration A. I. R. 1965 S. C. 87	13, 20, 43, 49
Kanhaiya Lal v. Commr. I. T., A. I. R. 1962 S. C. 1328	417, 444, 445
Kapur Singh v. Union of India (1960) 2 S. C. R. 569 A. I. R. 1960 S. C. 493 (497)	520, 524.
Kar. v. Chief Justice A. I. R. 1961 S. C. 1367	257
Karam v. State of Bombay (1964) 6 S. C. R. 984	539
Karimtharuvi Tea Estates v. State of Kerala, A. I. R. 1963 S. C. 760: (1963) 1 S. C. J. 265	151

Karnail Singh v. State of Punjab, A. I. R. 1954 S. C. 204 (1954) S. C. R. 904	241
Karnapura Development Co. Ltd. v. K. Maraijan Singh A. I. R. 1956 S. C. 443	388
Karta Education Society v. U. P. A. I. E. 1966 S. C. 1307	160, 163, 209, 216.
Kartar Singh & others v. State of Punjab, (1956) S. C. S. C. R. 476 A. I. R. 1956 S. C. 542	187, 189, 194, 249, 257, 456,
Kasturi Lal v. State of U. P., A. I. R. 1965 S. C. 1039	540
Karta Education Society v. State of U. P. A. I. R. 1966 S. S. 1307	99, 264.
Kathi Ranning Rawal v. State of Saurashtra, (1952) S. C. R. 435 (1952) S. C. J. 168 : S. C. A. 245 A.I.R. 1952 S. C. 123 (1952-54) 2 C. C. 75	153, 154, 155 159, 172, 173, 178, 285, 511.
Kati dass v. State of Bombay 1965(1) S. C. R. 887	32
Kashan Kishore v. Ram Dev. A. I. R. 1956 S. C. 100	433
Kaushalya v. Bachittar,	477
Kays Construction Co., Workmen A. I. R. 1959 S. C. 210	426
K. C. G. Naryan Deo v. State of Orissa, A. I. R, 1953 S. C. 375	36
K. C. Malhhee v. Mst Rattan Kaur A. I. R. 1936 P. C. 48	45
K. D. Co., v. K. N. Singh, A. I. R. 1956 S. C. 446	52
Kedar Nath v. Prahlad Rai A. I. R. 1960 S. C. 213	95
Kedar Nath v. State of Bombay A. I. R. 1953 S.C. 404	159
Kedar Nath v. State of West Bengal (1958) S. C. A. 835 (1954) S. C. R. 30 : A.I.R. 1953 S. C. 404 : (1952-54) S. C. J. 168 : (1952) S. C. A. 245 : (1952-54) 2 C. C. 73	155, 159, 158. 109
Kedar Pandev v. Narian Bilkram A. I. R. 1966 S. C. 160	25, 26, 51, 119, 120, 122, 240, 308, 323, 327, 449
Kerala Education Bill in re. A. I. R. 1958 S. C. 958 (1959) S. C. J. 32	119, 120, 122, 240, 308, 323, 327, 449
Kesar Singh v. Balwant Singh A. I. R. 1967 S. C. 509	400
Keshav v. State A. I. R. 1951 S. C. 128	126
Keshava v. State of Bombay A. I. R. 1951 S. C. 129	11
Keshava Madhava Menon v. State of Bombay (1954) S.C.J. 182 (1951) S. C. R. 228 (1951) 1 M. L. J. 370 S. C. A. I. C. 1951 S. C. 128 (1950-51) C. C. 1	121, 125, 136.
Keshwan v. State of Bombay 1951 S. C. 228	44
Keshov Tal Pandev v. Emperor 1944 F. C. R. 57 A. I. R. 1944 F. 24	414
Khacheru Singh v. State of U. P. A. I. R. 1956 S. C. 456	452
Khajoor Singh v. Union of India, A. I. R. 1961 S.C. 532 (1961) 2 S. C. R. 828	487

Khandige Sham Bhat v. Agricultural I. T. Officer, A. I. R. 1963 S. C. 591	146
Kharak Singh v. State of U. P. (1964) 1 S. C. R. 332 A. I. R. 1963 S. C. 1295	202
Kharak Singh v. State of U. P., A. I. R. 1963 S. C. 195 A. I. R. 1964 1 S. C. R. 242	240, 286
Khare v. Election Commission, A. I. R. 1958 S. C. 139	331, 332
Khare v. State of Delhi, (1950) S. C. R. 519 : (1950-51) C. C. 52, 328, A. I. R. 1950 S. C. 211	201, 202, 203, 204, 241, 242, 243, 247, 249, 260, 261, 300
Khem Chand v. Union of India, A. I. R. 1963 S. C. 687 (1963) 2 S. C. J. 312	516, 527
Khem Chand v. The Union of India and others : (1958) S. C. A. 2222 : A. I. R. 1958 S. C. 300 : (1959) S. C. J. 497 : (1958) S. C. R. 1080	519, 520, 522, 527
Khushal Rao v. State of Bombay, A. I. R. 1958 S. C. 22, 1958 S. C. 22, 1958 S. C. R. 552	408, 417
Khyerbari Tea Co. v. State of Assam, A. I. R. 1964 S. C. 925	151, 507
Kidar Nath v. State of West Bengal, A. I. R. 1953 S. C. 450	144
Kirkness v. John Hodson and Co. 1955 A. C. 696	16
Kirpal Singh v. State of U. P., A. I. R. 1963 S. C. 712	454
Kishan Chand v. Commissioner of Police, A. I. R. 1961. S. C. 705	227, 491
Kishan Chand v. I. T. Commissioner Bomhay, A. I. R. 1963 D. C. 390	400, 401
Kishan Singh v. Empeorr 55 Ind. App. 390	402
Kishan Singh v. State of Rajasthan, A. I. R. 1955 S. C. 795	168, 311, 315
Kishor v. Union of India A. I. R. 1962 S. C. 1139	152, 177, 522
Kitchman v. Matchalia 1947, 215 U. S. 221	132
K. K. Kouchni v. State of Madras, A. I. R. 1960, S. C. 1182 1960 3 S. C. R. 827	35, 210
K. K. Kunam v. State of Kerala, A. I. R. 1962 S. C. 404	160
K. K. Konvenan v. State of Kerala, A. I. R. 1962 S. C. 323	314
K. J. Khosla & Co. v. Deputy Commissioner of Commer cial Textile Madras, A. I. R. 1966 S. C. 1216	390
K. M. Shangam v. S. R. V. S. Pvt. Ltd. A. I. R. 1963, S. C. 1629	385, 460, 478
K. N. Gurswami v. State of Mysore 1955 S. C. R. 305 A. I. R. 1953 S. C. 592	18, 500
K. N. Jogalker v. Commissioner of Police, A. I. R. 1957 S. C. 28	53, 72
Kochinni v. State of Madras, A. I. R. 1960 S. C. 705 1959 S. C. J. 853 (1959) Supp. 2 S. C. R. 316	188, 131, 318, 503, 505, 508, 512

K Kunahammad v The State of Madras A I R. 1960 S C 663	451
K Rao v A P State Road Transport Corporation A I R 1961 S C 82	270
Krishan Chander v Central Tractor Organisation, A I R. 1962 S C 602 (1962) 3 S C R 187	177
Krishana Chand v Commissioner of Police A I R. 1951 S C 705	269
Krishnan v State of Madras (1951) S C R 621 (1951) S C, J 453 A I R. 1951 S C 301 (1951) 2 M L J 103 (1950-51) C C. 169	34
K S Ramamurthy v Chief Commissioner Pondichery A I R. 1963 S C 1464	119, 122, 171 173, 420
K. S. Sri Niwasan v Union of Indian A I R 1958 S C 426	67
K T Moopol Nair v State of Kerala 1961-3 S C R 77 1961 S C 552	151, 153
Keeder Panday v. Narain Bihram A I R 1966 S C 160	109
Kerala Education Bill, In re, A I R 1958 S C 906 1959 S C J 32	25, 21, 51, 119 120, 122, 240, 241, 308, 323, 327, 459
Kesar Singh v Balwant Singh, Kesardeo v Radha- kishen, (1953) S C R 136 A I R 19 3 S C. 23	400
Keshab v State A I R 1951, S C 123	126
Keshva v State of Bombay, A I R 1951 S C 129	11
Keshava Madhava Menon v State of Bombay (1951) S C J 182 (1951) S C R 228 (1951) 1 M L J 370 (S C) A I R 1951 S C 128 (1950-51) C C 1	121, 125, 136 44
Keshvan v State of Bombay A I R 1951 S C 228	44
Keshav Talpade v Emperor 1944 F C R 57 A I R 1944 F C R 57 A I R 1944 F C 24	414
Khacheru Singh v State of UP, A I R 1958 S C 546	452
Kulathi v State of Kerala A I R 1960 S C 1814	109, 110, 113
Kultar Singh v Mukhtiar Singh A I R 1965 S C 143	83
Kumbha Mawji v Dominion of India A I R 1953 S C 313	173
Kanba m naumat v Govt of India 1952 (1) S C R 105	105, 222
Kunji Lal v State of M P 1955 S C R 872	277
Kunji Kehawan v M M Phillip A I R 1964 S C 169	292
Kunjunja Varan v State A I R 1956 S C 143	347
Kunnathat v State of Kerala, A I R 1961 S C 552 (1931) 3 S C R 77	166 270
L	
Labour Board v Truck Driver (1956) 353 U S	87, 196
Labour Commissioner Madhy Pradesh v Barharpur Tapti mills A I R 1964 S C 1687	88

Lachman Dass v State of Punjab A I R 1963 S C 222 (1963) S C R 353	218	236	294
Lachman Dass v State of Bombay A I R 1952 S C 127 1951 S C R 710	121	125	141
	143	150	156
	156	158	
Lachman v The State A I R 1952 S C 169			450
Lachman Singh v State A I R 1952 S C 167			408
Ladli Prasad v Kanai Distillery A I R 1933 S C 1279			
Ladore v Bennett 1939 A C 462	65	391	20
Lakmi Narain Dass v Province of Bombay A I R 1950 F C 59			300
Lakshmanappa v Union of India A I R 1955 S C 3			312
Lala Bhawan v Ram Chand and another A I R 1965 S C 1717			495
Lalit v Adv General (1957) S C R 167 A I R 1957 S C 250			457
L & N Rly Co v Barman	278	33	
Lamaksnya v Collector 1955 2 S C R 983			182
Land Revenue Commissioner v Maxse 1919 1 K B 647			228
Lakshmanappa v Union of India A I R 1955 S C 103 I S C K 679	357	506	510
	533		
L D Sugar Mills v Ram Sarup A I R 1957 S C 87			87
Leach and Co v M/s Jare dne skinner and Co A I R 1975 S C 359			77
Lekh Raj Seth Ram Dass Elwani v Deputy Custodian Bombay A I R 1960 S C 334			499
Leoroy Frey and another v The Supdt District Jail Amritsar and another 1958 S C A 240 A I R 1958 S C 119			274
Leovds Bench Delhi v Panna Lal Gupta A I R 1956 S C 76			42
Lila Watt v State of Bombay A I R 1958 S C 521 1958 S C R 721			
Lily Isabel Thomas A I R 1964 S C 855	128	213	
Life Insurance Corporation v Sunil Kumar A I R 1964 S C 847	84	89	460
Limisy case s A I R 1954 S C 20			490
Labour pool v Turner 1861 30 L J C H 379 A			413
Local Govt Board v Arldge 1915 A C 120			30
London Rubber Co v Durex Product I N C A I R 963 S C 1882			493
London Tramways v L G G 1898 A C 335			18
Lucin v Hamlyn 21 L T 356			133
			228

M

Macherala Hanumananth v Union of India A I R 1957 S C R 927	159
---	-----

Madan Gopal v. State of Punjab A. I. R. 1963 S. C. 531 (1963) 2 S. C. J.	185, 516, 529, 530
Madan Lal v. Shri! Changdeo Sugar Mills, A. I. R. 1962 S. C. 1543	36, 47
Madhav v. State of Mysore, A. I. R. 1962 S. C. 8	87, 528
Madhubai v. Union of India, A. I. R. 1961 S. C. 21 : (1961) 1 S. C. R. 191	136, 227, 228
Madhya Bharat State Road Transport Corporation Bau- ragari v. Regional Transport Authority, A. I. R. 1966 S. C. 156	73
Madhya Pradesh Industries Ltd. v. Union of India' and others, A. I. R. 1966 S. C. 671	486
M. A. Gandhi v. Union of India, A. I. R. 1961 S. C. 21	184
Mahabir Rusod v. Durga Datt, A. I. R. 1961 S. C. 990	232
Mahadaya! v. C. T. O. A. I. R. 1959 S. C. 667 (1959) S. C. R. 551	448
Mahadeo v. State of Bombay, (1959) 2 S. C. A. 154 A. I. R. 1959 S. C. 735	209
Mahant Moti Dass v. S. P. Sabi, A. I. R. 1959 S. C. 942	124, 150
Mahendra v. Sushila, A. I. R. 1965 S. C. 364	80
Mahij Bhai v. Main Bhai.	44
Mahinder Pal v. State of U. P., A. I. R. 1963 S. C. 1019	125, 311
Makhan Lal Malhotra v. Union of India, A. I. R. 1966 S. C. 392	165
Major E. G. Barlou v. State 1952 2 S. C. R. 195	315
Major E. G. Barcoy v. State of Bombay, A. I. R. 1961 S. C. 1742	408, 453
Makhan Singh v. State of Punjab, A. I. R. 1952 S. C. 27 : 1952 S. C. R. 368	285, 284
Makhan Singh v. State of Punjab, A. I. R. 1964 S. C. 381	95, 318, 503, 542, 543, 544, 545, 546
Makhan Singh v. State of Punjab, A. I. R. 1964 S. C. 1120	449
Malik Ram v. State of Rajasthan, A. I. R. 1961 S. C. 1575 (19 3) 1 S. C. J. 461	481
Manager B. iv. C. Mills v. J. Bastian, A. I. R. 1960 S.C. 112	447
Management of the Northern Railway Co-operative Society Ltd. v. Jodhpur Industrial Tribunal Raja- sthan, A. I. R. 1967 S. C. 1182	489
Management of Hindustan Commercial Bank Ltd. v. Bhagwan Dass, A. I. R. 1965 S. C. 1142	426
Management of Wanger v. Workmen, A. I. R. 1964 S. C. 871	443
Manak Lal v. Prem Chand, A. I. R. 1957 S. C. 425 (1957) S. C. 575	95, 429
Mangel Singh v. State of M. B., A. I. R. 197 S. C. 1959	456
Manji Lal v. Sguan Chand, A. I. R. 1965 S. C. 101	29

Mangoo Singh v. Election Tribunal, A. I. R. 1957 S. C. 912	14
Manipur Administration v. T. B. Singh, A. I. R. 1965 S. C. 87	277, 461
Manna Lal v. Collector of Jhaffawara, A. I. R. 1991 S. C. 1828	164
Mannalal v. State of Assam, A. I. R. 1962 S. C. 380 : (1962) 3 S. C. R. 936	269
Manohar v. State (1951) (1) S. C. R. 671	266
Manohar Lal v. State of Punjab, A. I. R. 1961 S. C. 418 (1961) 2 S. C. R. 343	47, 222, 231, 268
Maqbool Hussain v. State of Bombay, (1953) S. C. J. : 356 1953) S. C. A. 6 1 : A. I. R. 1953 S. C. 325 : (1953) S. C. R. 730	273, 274, 275, 277, 235, 422
Massachuset v. Mellon (1923) 262 U. S. 447	130, 132
Masthan Singh v. Chief Commissioner, A. I. R. 1962 S. C. 797	100, 105,
Masthan v. Chief Cmmisioner A. I. R. 1963 S. C. 533	101, 105, 119 122
Master Construction Co. v. State of Orissa, A. I. R. 1966 S. C. 1049	445
Matajog v. Bhari (1955) 2 S. C. R. 925 : A. I. R. 1956 S. C. 44	144, 154
Mathan v. T. C. State, A. I. R. 1965 S. C. 241	408
Majilal v. Sagan Chand A. I. R. 1965 S. C. 101	107
Mannu Libha Gandhi v. Union of India, A. I. R. 1961 S. C. 31	123
Mayfair Property Co, (1898) 2 C. H. 28 at P-35	15
Maulwi Abdul Shankur case 1959 S. C. R. 387	266
Mazagon Dock Ltd. v. I. T. E. P. Commissioner, A. I. R. 1958 S. C. 831	5, 6
Mayor etc. of Montreal v. Brown (187-) 2 A. C. 163 (184)	450
M. D. Cotton Association v. Union of India, A. I. R. 1954 S. C. 634	146
Meenglas Tea Estate v. Their Workmen, A. I. R. 1963 S. C. 1721	430
Meenakshi Mills, v. Commr. of I. T. (1956) S. C. R. 691 A. I. R. 1957 S. C. 49	432
Meenakshi Mills v. Vishwanatha (1955) 1 S. C. R. 787 A. I. R. 1965 S. C. 13	130, 156, 157
Meryan v. Collector, A. I. R. 1967 S. C. 52	163, 164, 179
M. G. Iruimalppa v. R. Yellaphagond, A. I. R. 1959 S. C. 906	428, 446
Mineral development Ltd. v. State of Bihar, A. I. R. 1960 S. C. 468	243
M. Chitiani Vidawatti v. C. L. Ketali, A. I. R. 1964 S. C. 978	398
Mithan Lal v. State of Delhi, A. I. R. 1957 S. C. 682 1959 S. C. R. 445	532

Madan Gopal v. State of Punjab A. I. R. 1963 S. C. 531 (1963) 2 S. C. J.	185, 516, 529, 530
Madan Lal v. Shrill Changdeo Sugar Mills, A. I. R. 1962 S. C. 1543	36, 47 87, 528
Madhav v. State of Mysore, A. I. R. 1962 S. C. 8	
Madhubai v. Union of India, A. I. R. 1961 S. C. 21 : (1961) 1 S. C. R. 191	136, 227, 228
Madhya Bharat State Road Transport Corporation Ban- ragari v. Regional Transport Authority, A. I. R. 1966 S. C. 156	73
Madhya Pradesh Industries Ltd. v. Union of India and others, A. I. R. 1966 S. C. 671	486
M. A. Gandhi v. Union of India, A. I. R. 1961 S. C. 21	164
Mahabir Rusod v. Durga Datt, A. I. R. 1961 S. C. 990	232
Mahadaya v. C. T. O. A. I. R. 1958 S. C. 667 (1959) S. C. R. 551	446
Mahadeo v. State of Bombay, (1959) 2 S. C. A. 154 A. I. R. 1959 S. C. 735	209
Mahant Moti Dass v. S. P. Sabi, A. I. R. 1959 S. C. 942	124, 156
Mahendra v. Sushila, A. I. R. 1965 S. C. 364	80
Mahij Bhai v. Main Bhai,	44
Mahinder Pal v. State of U. P., A. I. R. 1963 S. C. 1019	125, 311
Makhan Lal Malhotra v. Union of India, A. I. R. 1966 S. C. 392	165
Major E. G. Barlow v. State 1952 2 S. C. R. 195	335
Major E. G. Barey v. State of Bombay, A. I. R. 1961 S. C. 1762	408, 453
Makhan Singh v. State of Punjab, A. I. R. 1952 S. C. 27 : 1952 S. C. R. 368	285, 284
Makhan Singh v. State of Punjab, A. I. R. 1964 S. C. 381	95, 318, 503, 542, 543, 544, 545, 546
Makhan Singh v. State of Punjab, A. I. R. 1964 S. C. 1120	449
Malik Ram v. State of Rajasthan, A. I. R. 1961 S. C. 1575 (19 3) 1 S. C. J. 461	481
Manager B. v. C. Mills v. J. Bastian, A. I. R. 1960 S.C. 112	447
Management of the Northern Railway Co-operative Society Ltd. v. Jodhpur Industrial Tribunal Raja- sthan, A. I. R. 1967 S. C. 1182	489
Management of Hindustan Commercial Bank Ltd. v. Bhagwan Dass, A. I. R. 1965 S. C. 1142	426
Management of Wanger v. Workmen, A. I. R. 1964 S. C. 871	443
Manak Lal v. Prem Chand, A. I. R. 1957 S. C. 425 (1957) S. C. 575	95, 428
Mangel Singh v. State of M. B., A. I. R. 197 S. C. 1959	456
Manji Lal v. Sguan Chand, A. I. R. 1965 S. C. 101	29

Mango Singh v. Election Tribunal, A. I. R. 1957 S. C. 912	14
Manipur Administration v. T. B. Singh, A. I. R. 1965 S. C. 87	277, 461
Manna Lal v. Collector of Jhallawara, A. I. R. 1991 S. C. 1828	164
Mannalal v. State of Assam, A. I. R. 1962 S. C. 380 : (1962) 3 S. C. R. 936	269
Manohar v. State (1951) (1) S. C. R. 671	266
Manohar Lal v. State of Punjab, A. I. R. 1961 S. C. 418 (1961) 2 S. C. R. 343	47, 222, 231, 268
Maqbool Hussain v. State of Bombay, (1953) S. C. J. : 356 1953) S. C. A. 6 I : A. I. R. 1953 S. C. 325 : (1953) S. C. R. 730	273, 274, 275, 277, 235, 422 130, 132
Massachuset v. Mellon (1923) 262 U. S. 447	100, 105,
Masthan Singh v. Chief Commissioner, A. I. R. 1962 S. C. 797	101, 105, 119 122
Masthan v. Chief Cmmissioner A. I. R. 1963 S. C. 533	
Master Construction Co. v. State of Orissa, A. I. R. 1966 S. C. 1049	445
Matajog v. Bhari (1955) 2 S. C. R. 925 : A. I. R. 1956 S. C. 44	144, 154
Mathan v. T. C. State, A. I. R. 1963 S. C. 241	408
Majilal v. Sugan Chand A. I. R. 1965 S. C. 101	107
Mannu Libha Gandhi v. Union of India, A. I. R. 1961 S. C. 31	123
Mayfair Property Co, (1898) 2 C. H. 28 at P-35	15
Maulwi Abdul Shankur case 1959 S. C. R. 387	366
Mazagon Dock Ltd. v. I. T. E. P. Commissioner, A. I. R. 1958 S. C. 831	5, 6
Mayor etc. of Montreal v. Brown (187-) 2 A. C. 163 (184)	450
M. D. Cotton Association v. Union of India, A. I. R. 1954 S. C. 634	146
Meenglas Tea Estate v. Their Workmen, A. I. R. 1963 S. C. 1721	430
Meenakshi Mills v. Commr. of I. T. (1956) S. C. R. 691	432
A. I. R. 1957 S. C. 49	
Meenakshi Mills v. Vishwanatha (1955) 1 S. C. R. 787	130, 156, 157
A. I. R. 1965 S. C. 13	163, 164, 179
Meryan v. Collector, A. I. R. 1967 S. C. 52	
M. G. Irumalippa v. R. Yellaphagond, A. I. R. 1959 S. C. 906	428, 446
Mineral evelopment Ltd. v. State of Bihar, A. I. R. 1960 S. C. 468	243
M. Chitiani Vidawatti v. C. L. Ketali, A. I. R. 1964 S. C. 978	398
Mithan Lal v. State of Delhi, A. I. R. 1957 S. C. 682 1959 S. C. R. 445	532

Mithoo Sahani v. Union of India, A. I. R. 1964 S. C. 1536	428
M. K. Gopalan v. State of M. P. 1957 S. C. A. 557: 1952-54 2 C. C. 109, A. I. R. 1953 S. C. 362	158
M. K. Cwhipa v. State of Gurjrat, A. I. R. 1962 S. C. 1517	317
M. L. Ahmed v. State of Bombay, A. I. R. 1957 S. C. 857	114
Mubarak Ali v. State of Bombay, A.I.R. 1957 S. C. 857	452
Model Mills v. Dharam Dass, A. I. R. 1958 S. C. 311	73, 74
Mohd. Ali v. Union of India, A. I. R. 1964 S. C. 980	89 151
Mohd. Amniera Basi v. State of M. B. 1960 3 S. C. R. 178	222
Mohd. Amir v. Municipal Board Sitapur, A. I. R. 1965 S. C. 1923	53
Mohd. Ayub Khan v. Commissioner of Police, A. I. R. 1965 S. C. 1623	111
Mohd. Bhai v. State of Gujarat, A. I. R. 1962 S. C. 1517	312
Mohd. Dastagir v. State of Madras, A. I. R. 1960 S. C. 757	409
Mohd. Ghouse v. State of Andhra, A. I. R. 1957 S. C. 249	447, 524
Mohd. Hazi v. State of Gujarat, A. I. R. 1962 S. C. 1517	160
Mohd. Hanif v. State of Bihar, 1959, S. C. R. 629 : A.I.R. 1958 S. C. 731	126, 142, 227, 228, 240, 305, 323, 324
Mohd. Hussain v. State of Bombay, A. I. R. 1962 S. C. 97	234
Mohd. Ibrahim Hussain v. State of U. P., A. I. R. 1964 1625	498
Mohd. Mira v. Thirumaleya, A. I. R. 1966 S. C. 430	395
Mohd. Raza v. State of Bombay, A. I. R. 1958 S. C. 1439	108
Mohd. Sidol Ariffin v. Yeohooi Gork, A. I. R. 1916 P. C. 242	45
Mohd. Yasin v. Town Area Committee Jalalabad, A. I. R. 1952 S. C. 115	231, 236
Morn Maur v. T. Pollo, A. I. R. 1959 S. C. 31 : 1959 S. C. R. 301	389, 398
Mohinder Singh v. State 1950 S. C. R. 121 : A. I. R. 1955 S. C. 415	407, 840
Mohori Bibee v. Dhurmodhtia	28
Moren Mar v. Palu, A. I. R. 1959 S. C. 31 : 1959 S. C. R. 301	339, 398
Moori v. State of Union, A. I. R. 1965 S. C. 1954	12
Morras v. Smith	591
Moti and Co. v. Vishwanath Shashtri, A. I. R. 1954 S. C. 545	76
Moti Das v. Sahi, A. I. R. 1959 S. C. 943 (1959) Supp. (2) S. C. R. 563	215, 265

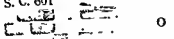
Motipur Zamindar Co. v. State of Bihar, A. I. R. 1962 S. C. 661	26, 83
Moti Ram v. N. Fointer Railway, A. I. R. 1964 S. C. 600	42, 47, 88 161, 461, 516, 519, 523, 528
Moti Ram v. State A. I. R. 1984 S. C. 600	68
Moti Ram v. Union of India, A. I. R. 1964 S. C. 600	522
Motor Transport Controller v. P. R. M. Union, A. I. R. 1964 S. C. 1090	87
M. P. Industries v. Union of India, A. I. R. 1966 S. C. 676	442, 487
M. P. Sharma and others v. Statish Chandra (1954) S. C. R. 1077 (1954) S. C. 1428	262
M. R. Deka v. North Fointier Railway, A. I. R. 1964 S. C. 600	522
Mrutungy pani v. Narmadanbara, A. I. R. 1951 S. C. 1353	95, 66
M R. Ranganathan v. State of Madras 1955 2 S. C. R. 374	22
M. S. M. Sharma v. Shri Krishna Sinha, A. I. R. 1959 S. C. 395	13, 17, 19, 184, 350, 353, 354, 355, 356, 357, 358, 359, 360, 469, 591
M/s. Amrit Dhara Pharmacy v. Manhor Lal Velecha Civil Appeal No. 24 of 1962	197, 198
M/s. Associated Tubewells v. Gujjar Mal A. I. R. 1957 S. C. 742	419
M/s. Barrker Coal Co. v. Union of India 1962 1 S. C. R. 44	315
M/s. B. C. And P. Work Ltd. v. Their employee, A. I. R. 1959 S. C. 633	425
M/s. Cambatha and Co. v. E. P. T. Commissioner, A. I. R. 1961 S. C. 1010	72
M/s. D. G. Gobindra v. Shanti and Co. A. I. R. 1961 S. C. 1285	84
M/s. Dadrao Mal, Gobind Ram v. Shahji Kalidass and Co. A. I. R. 1961 S. C. 1285	71
M/s. Dhan Dhanla Kedata and Co. v. The Commissioner of Income Tax, A. I. R. 1959 S. C. 219	85
M/s. Jiwani Lal v. Its workmen, A. I. R. 1961 S. C. 1567	65
M/s. Jetha Nand and sons v. State of U. P., A. I. R. 1961 S. C. 791	72
M/s. L. B. Ambica Ram v. I. T. Commissioner, A. I. R. 1959 S. C. 1294	430
M/s. R. C. Mittal and sons v. I. T. Commissioner West Bengal 1959 S. C. 868	53

M/s. Tulsi Dass Khimji v. Workmen, A. I. R. 1963 S. C. 1013	436
M/s. Suraj Mal v. I. T. Commissioner, A. I. R. 1963 S.C. 337	233
M. S. J. Ranmal v. State of Gujarat, A. I. R. 1962 S. C. 891	350
M. S. Rao v. State of A. P., A. I. R. 1963 S. C. 927	167
Muir Mills v. Suti Mill Union 1955 S. C. A. 321 1955 S. R. 991	100
Mulk Raj v. State of U. P., A. I. R. 1959 S. C. 992	428
Municipal Council Khurani v. Kamal Kumar A. I. R. 1964 S. C. 1321	467
Municipal Council of Aden v. Commonwealth 1904 I Com. L. R. 208	21
Municipal Council Palvai v. T. J. Joishp 1963 S. C. 1560	425
Municipality of Anand v. State of Bombay A. I. R. 1962 S. C. 988	73
Munna Lal v. State of U. P. A. I. R. 1964 S. C. 21	455
Murarka Radhy Shayam v. Roop Singh 1964 D. E. C. 230	60
Mussliar v. Venkatachalam A. I. R. 1956 S. C. 246 (1955) 2 S. C. R.	473
Mustak Hussain v. State of Bombay A. I. R. 1955 S. C. 373	33
Muthiah x. Commr of I. T. (1955) 2 S. C. R. 1247 A.I.R. 1956 S. C.	157
Muthe Swami v. State of Madras A. I. R. 1954 S. C. 4	279
M. V. Joshi v. M. U. Shipley, A. I. R. 1961 S. C. 1694	20
Mysore State Electricity Board, v. Banfore Cotton mills A. I. R. 1962 S. C. 11	42

N

Nabhiraja v. State of Mysore and others (1952) S. C. R. 744 A. I. R. 1952 S. C. 339	130
Naginda Nath Bora v. The Commanda Mills Division, A. I. R. 1958 S. C. 398 : 1958 S. C. R. 1240	476, 479, 482, 485, 502
Nageswar Rao v. A. P. S. R. T. Corpn., A. I. R. 1959 Supp. 1 S. C. R. 319	334, 385, 491
Nageswarao v. State of A. P., A. I. R. 1959 S. C. 1376	343, 344, 492
Nagaswararao v. A. P. S. R. T. C., A. I. R. 1959 S. C. 398, 1959 Supp. 1 S. C. R. 319	481, 491
Nagpur Corporation v. Its employees, A. I. R. 1960 S. C. 675	16, 20
Nagubai Amrula v. B. Sharma Rao, A. I. R. 1956 S. C. 593	58, 396
Nain Sukh Dass v. State of U. P., A. I. R. 1953 S. C. 384 (1853) S. C. A. 594	121, 170, 171, 172, 173
Nahuda Ali case 1951 A. C. 66	496
Nalmikant Mody v. I. T. Commissioner Bombay, A. I. R. 1967 S. C. 193	16

Nalinkakhyia v. Shayam A. 1953 S.C. 148 (1953) S. C. R. 533	13, 25
Nanavati v. State of Bombay, A. I. R. 1961 S. C. 112 (1961) 1 S. C. R. 497	346, 347
Narain v. State of Punjab, A. I. R. 1959 S. C. 484	78
Narain v. State of U. P., A. I. R. 1961 S. C. 61	387
Naranjan v. State of Punjab, A. I. R. 1952 S. C. A.I.R. (1952) S. C. R. 395	284, 294
Narain Mandi v. State of Bombay, 1959 S. C. R. 490	317
Nuresmhachar v. State of Mysore, A. I. R. 1960 S. C. 247	526
Narayan v. Gopal, A. I. R. 1960 S. C. 100 (1960) 1 S. C. R. 773	396
Narayan Deo v. State of Orrissa, 1954 S. C. R. 1	24
Narayandass v. State of W. B. A. 1959 S. C. 1118 (1960) 1 S. C. R. 83	408
Narayan Lal v. Maneck, A. I. R. 1961 S. C. 29 (1961) 1 S. C. R. 417	278
Narayanappa v. State of Mysore, A. I. R. 1960 S. C. 1073 (1960) 3 S. C. R. 742	271
Naryana Swami v. Emperor, A. I. R. 1939 P. C. 4	13
Narendra v. Union of India 1960 2 S. C. R. 277 of 1960 S. C. J. 214, A. I. R. 1960 S. C. 433	119, 244, 245, 257, 269
Marendra Kumars case 1966 2 S. C. R. 375	268
Narendra Nath Sicar v. Kamal Bosmi L. R. 23 Cal 563	28
Naresh v. State, A. I. R. 1967 S. C. 1.	183, 383, 461, 502, 503
Narasimachar v. State of Mysore, A. I. R. 1960 S. C. 243	523
Narsingh v. State of U. P. (1952-54) 2 C. C. 495 A. I. R. 1954 S. C. 458 (1955) 2 S. C. R. 238	402
Naryan v. M. P. Mistri, A. I. R. 1961 S. C. 29	168
Naryo Rao v. Ishwar Lal, A. I. R. 1965 S. C. 1818	386, 390
Nathu Mal v. State of Madhya Pradesh, A. I. R. 1966 S. C. 43	16
National Labour relation v. Fan Steel Corporation 1938 (306) U. S. 31	196
Navichandro v. Commissioner of Income Tax Bombay, A. I. R. 1955 S. C. 58	14, 91
Navnit Lal v. Income Tax Commissioner A. I. R. 1955 S. C. 1375	41, 217
N. B. Kher v. State of Delhi 1950 S. C. R. 519	221
N. B. Kharac v. Election Commissioner, A. I. R. 1957 S. C. 694	144
N. Chittiar v. Chettiar 1960 S. C. R. 209	65
Near v. Mines etc. 1951 283 U. S. 697	251
N. Bhai Ramji v. State of Bombay A. I. R. 1961 S.C. 1571	314
New India Motor v. Moris A: I. R. 1960 S.C. 175	430
New India Sugrr Mills v. Commr of Sales Tax A. I. R. 1963, 1963 supp 2 S. C. C. 459	18, 435.

New Marine Col co. v. Union of India 1964 2 C. S. R. 859	539
News Papers Ltd v. State of U. P. Industrial Tribunal A. I. R. 1960 S. C. 1329	447
News Papers Ltd v. Industrial Tribunal 1957 S. C. R. 754 A. I. R. 1957 S. C. 532	74
New Parkash Tram Co. Ltd v. New Sagoda Taxn Co. Ltd A. I. R. 1957 S. C. 1232	489
Nibioram Choudra Beg v. Nohindra Nath Nhdghu A. I. R. 1962 S. C. 1965	502 90
Nilakanta v. Kharakal A. I. R. 1962 S. C. 666	
Nissar v. State of U. P. A. I. R. 1957 S. S. 366 : (1957) S. C. R. 657	94
Nohiria Ram v. Director of General Health Services A. I. R. 1953 S. C. 113	522
Nohiria Ram v. Union of India A. I. R. 1953 S. C. 113 (117)	522 451
Noorkhan v. State of Rajasthan A. I. R. 1964 S. C. 284	
Noratam Kishore v. Union of India A. I. R. 1964 S. C. 1950	163
N. P. Ponnuswami v. Returning Officer A. I. R. 1952 S. C. 64	70, 112 547
N. R. Co-operative Society v. Indus Textile Raj. A. I. R. 1987 S. C. 1186	440 93
N. Rao v. A. P. R. T. Corporation A. I. R. 1959 S. C. 303	97
N. S. Mirajkar v. State of Maharashtra A. I. R. 1967 SC 1	
N. S. Thread and Co v. James Chadwic (1953) S. C. R. 1028 A. I. R. 1953 S. C. 357	94 220
N. T. F. Mills v. 2nd Punjab Tribunal 1957 S. C. R. 335	
N. T. Thever v. G. Raja Nainer and another A. I. R. 1959 S. C. 422	468
Nuthawal v. Shri Subbiarnary Swami A. I. R. 1950 S. C. 601	398
	
Ohio v. Akion Metropolitan Park District (1930) 181 U. S. 79	99
Okara E. S. C. v. State of Punjab A. I. R. 1960 S. C. 284 : 1960) 2 S. C. R. 239 (1) 263	235, 213 192
O. K. Kely v. Morway (1883) 14- U. S. 105	
Om Parkash v. State of U. P. A. I. R. 1959 S. C. 600 (1955) 2 S. C. R. 391 (III) 133 :	159, 104
O. M. P. Works (P) Ltd v. B. K. Thahorr A. I. R. 1961 S. C. 573	52 82
O. P. Jain v. Gran Chand A. I. R. 1959 S. C. 837	
Orient Weaving Mills v. Union of India A. I. R. 1963 S. C. 93	165 16
Ormond Instrument Co. v. Betts 1928 A. C. 143	
Orissa Cement Ltd v. Union of India A. I. R. 1963 S. C. 93	165

P

Paajie States T & I Co. Orgeon (1912) 223 U. S. 118	99
Pabitra Kumar v. State of W. B. A. I. R. 1964 S. C. 593	149
Paorna vithoda v. Mohd Multani A. I. R. S. C. 70	428
Pal v. Attorney General of Trubed A. I. R. 1963 P. C. 841	360
Pandit Ukhahole v. State of Maharastra, A. I. R. 1963 S. C. 1531	533
Panna Lal v. I. T. Officer A. I. R. 1955 S. C. 397	158
Pauna Lal v. Union of India (1957) S. C. R. 233 A. I. R. 1957 S. C. 397	21, 125, 130 154, 166, 269, 270, 533.
Parbhani v. R. T. A., A. I. R. 1960 S. C. 801 (1960) 3 S. C. R. 177	118, 229, 268 270.
Parimiseti v. Commissioner of I. T. R. 1963 S. C. 1905	448
Partap Singh v. State of Punjab A. I. R. 1964 S. C. 72	57, 151, 491 517, 528
Patna Improvement Trust v. Lakshmi Devi, A. I. R. 1963 S. C. 1077	95
Parry and Co Ltd. v. Commercial employees association Madras 1952 5 S. C. R. 516	481, 482.
Parsjotam v. Union of India A. I. R. 1958 S.C. 38 (1958) S. C. R. 828	518, 519, 550. 522, 523, 526 527.
P. bala qotias v. Union of India and other 1957 S. C. R. 1052	197
P. B. Kotia v. Union of India, A. I. R. 1955 S. C. 232	165
P. D. Wahdwa v. Union of India, A. I. R. 1964 S. C. 423	516
P. D. Shamdasani v. Central Bank of India, A. I. R. 1952 S. C. R. 391 1952 S. C. 59	121, 183, 208, 312, 503
Phlad Tarkj Reddy Co. Ltd. v. Commissioner of Income Tax, A. I. R. 1963 S. C. 1884	75
Pidasubhayya v. Akkamma, A. I. R. 1958 S. C. 1043	94
Pema Chibber v. Union of India, A. I. R. 1966 S. C. 441	104, 161, 221
Perehadi v. State of U. P., A. I. R. 1957 S. C. 211	407, 417
P. H. Kalyana v. M/s. Asia Finance Calcutta, A. I. R. 1963 S. C. 1759	443
P. H. Kalyani v. M/s. Air France Calcutta, A. I. R. 1963 S. C. 159	430
P. H. Mamadi v. State of A. P., A. I. R. 1965 S. C. 1827	148
P. Jain v. Gian Chand, A. I. R. 1959 S. C. 839	930
P. J. Ratam v. Kanikaram A. I. R. 1964 S. C. 244	457
P. Joseph John v. Chief Justice, A. I. R. 1955 S. C. 284 1953, 2 S. C. R. 1331	515, 521, 522, 534.

P. L. Dhingra v. Union of India, A. I. R. 1953 S. C. 36	522
P. L. Lakhan Pal v. State of J. & K., A. I. R. 1957 S. C. 197	293
P. L. Lakhan Pal v. Union of India, A. I. R. 1967 S. C. 909	470
P. O. cock v. Mason 1833 131 E. R. 1111	59
Popat Lal v. State of Madras, 1953 S. C. R. 677	13
Popular Bank in Liquidation v. Madhava Nayak, A. I. R. 1965 S. C. 654	49
Parabati Transport Co-operative Society Ltd. v. R. T. A. 1960 3 S. C. R. 175	20
Pradyat v. Chief Justice (1955) 2 S. C. R. 1331 : A. 1956 S. C. 285	522
Prajulla Kumar Mukerjee v. Bank of Commerce 74 I. C. 23	43
Partap Singh v. Gurbax Singh, A. I. R. 1962 S. C. 1172 (1962) Supp. (2) S. C. R. 839	271 381,
Partap Singh v. Manmohan Das, A. I. R. 1965 S. C. 1931	34, 35
Partap Singh v. Srikrishna, A. I. R. 1956 S. C. 140	27, 30
Partap Singh v. State of Rajasthan, A. I. R. 1960 S. C. 1208	172
Partap Singh v. Shrikrishna, A.I.R. 1956 S. C. 140	27, 30
Poohari Fakir v. C. H. R. E., A. I. R. 1963 S. C. 10	92
Prakash and Co. v. The Commissioner of Income Tax Bombay, 1956 S. C. R. 626	427
Pramasa case (1959) Supp. (1) S. C. R. 63,	412
Pranjab Kumar Mitra v. State of West Bengal (1959) Supp. S. C. R. 63, A. I. R. 1959 S. C. 194	411 455,
Prem Chand Garg v. Exercise Commr., A. I. R. 1963 S. C. 996	460
Prem Chand v. State of Bihar (1950) S. C. R. 799, A. I. R. 1951 S. C. 14	71, 393
Prem Lal Mulbi case 22 I. C. 107	22
Prem Nath v. State of Jammu Kashmir, A. I. R. 1959 S. C. 749 (1959) 2 S. C. A. 65	532
Prem Sagar v. S. V. Oil Co., A. I. R. 1965 S. C. 111	482
Principal v. Kalyan, A. I. R. 1966 S. C. 707	468
Printers Ltd. v. Joseph, A.I.R. 1950 S.C. 1156 : (1956) 3 S.C.R. 713	442
Pritam Singh v. State, A.I.R. 1950 S.C. 169 (1950, S.C.R. 453	11, 407, 412, 416, 417, 450
Pritam Singh v. State of Punjab A.I.R. 1957 S.C. 415	452
Pritam Singh v. State of Punjab A.I.R. 1967 S.C. 930	535
Prov. of Bombay v. Khussa Idas, (1950) S.C.R. 621 : (1950) S.C.J. 451, 1950 S.C. 22 (1950) 2 M.L.J. 703: 86 C.L. 330	479, 484
Prov of Bombay v. Municipal Corporation of the city of Bombay 73 Ind app.	271, 46
Provincial Transport Services v. State Industrial Court A.I.R. 1963 S.C. 114	476

P.T. Services v. S.I. Court A.I.R. 1963 S.C. 114	76
Public Service Commission State of U. P. v. Surashtava A.I.R. 1957 S.C. 912	531
Punjab Province v. Daulat 1942 F.C.R. 1	134
Purshottam v. Desai. (1955) 2 S.C.R. 887, A.I.R. 1956 S.C. 20	12, 142
Public Passenger Service Ltd v. M.A. Khaddar A.I.R. 1966 S.C. 89	401
Punjab National Bank v. Employees Federation A.I.R. 1963 S.C. 160	151
Punjab Rao v. D. P. Mehram, A. I. R. 1965 S. C. 1179	86
Puran v. State of Punjab, A. I. R. 1953 S. C. 459	279
Puranlal v. Union of India, (1958) S. C. R. 460 : (1958) S. C. A. 355, A. I. R. 1958 S. C. 163	294, 295, 303
Puran Lal v. President of India, A. I. R. 1961 S. C. 1519	371
Purshotam v. Desai, (1955) 2 S. C. R. 887 : A. I. R. 1956 S. C. 20	29, 147, 286, 293, 294
Purshotammab v. State of Kerala, A. I. R. 1962 S. C. 694 : (1962) Supp. (1) S. C. R.	69, 314, 317, 362, 364, 361, 365
Purshotam v. Union of India, A. I. R. 1953 S. C. 36	516, 517
P. V. Maduliar v. Sp. Collector, A. I. R. 1965 S. C. 1017	316

Q

Qasim Ravi and others v. State of Hyderabad and others (1953) S. C. R. 589, A. I. R. 1953 S. C. 156 : (1953) S. C. A. 742 (1953) S. C. J. 151	121, 125, 133, 156, 158
Quareshi v. State of Bihar, A. I. R. 1958 S. C. 731 : (1959) S. C. 629	131

R

R. v. Manchester Legal Aid Committees, 1951-2 Q. B. 313, 413	480, 485
R. Abdula v. S. T. A. Tribunal, A. I. R. 1959 S. C. A. 895	478
Radhakishan v. State of U. P., A. I. R. 1963 S. C. 823	90, 456
Radhakrishna v. Swami Nathan 48 Ind. App. 31	405
Radasbayam Khare's case 1959 S. C. R. 1440	486
Radasbayam v. P. M. G. Nagpur, A. I. R. 1965 S. C. 311	189, 194
Rafiqunnassa v. Lal Badhaur, A. I. R. 1964 S. C. 1511	39, 44
Ragbhir Singh v. State of Ajmer, A. I. R. 1957 S. C. 475	314
Raghamma v. Chinchamma, A. I. R. 1964 S. C. 136	394, 395, 396, 448
Ragbubir v. Court of Bar 1953 S. C. R. 1049 : A. I. R.	

1953 S. C. 373, (1953) S. C. A. 629 (1953) S. C. J. 505, 1952-53 C. C. 87	79, 219, 242, 243, 246, 248, 249, 313, 468, 499
Rai Shivindra Badhar Nafand College (I) L. L. J. 247	
Rai Ram Krishna v. State of Bihar, A. I. R. 1963 S. C.	457
Rajhav v. State, A. I. R. 1963 S. C. 74	
Rejbuvar v. Union of India, A. I. R. 1962 S. C. 263, 1962 3 S. C. R. 547	197 33
Raja Badhaur Mills v. Tuka Ram, A. I. R. 1955 S. C. 307	196
Raja Banopartap Singh v. Assistant Custodian, A. I. R. 1960 S. C. 247	34
Raja Bhai v. Basadev, A. I. R. 1965 S. C. 345	419
Raja Bherhinwra Naryanbook v. State of Assam, A.I.R. 1956 S. C. 503	313
Raja Bibi Mubba Gopala Krishna Yachindra v. Raja bibi S. A. Krishan Docbindra, A. I. R. 1963 S. C. 842	164
Raja Gopala Achari v. Corporation of Madras. A I. R. 1964 S. C. 1172	35
Raja Gopala Naidu v. The State Transport Appellant Tribunal, A. I. R. 1914 S. C. 1573	461
Rajamundry Electric Co. Ltd. v. Nagheshwar Rao 1957 S. C. R. 1066	76
Raja Jagavira v. State of Madras, A. I. R. 1954 S. C. 357	311
Raja Khiema v. State of Maharashtra, A. I. R. 1956 S.C. 217	450
Rajabkulkarni v. State, A. I. R. 1954 S. C. 73	144, 195, 196, 197, 199
Raja Naranlal Bansi Lal v. M. T. Mistry A. I. R. 1961 S. C. 2	165 85
Raja Ram v. State of Bihar A. I. R. 1964 S. C. 228	
Raja Ram Singh v. State of Rajasthan, Petn No. 259 of 1955 decided on 18.2.66	317, 369
Raja Venkatagir v. State of A. P. 1960 1 S. C. R. 552	317
Raja of Venketgri v. State of Andhra A.I.R. 1960 S. C. 32	314
Rajindra Chandra v. Union of India A.I.R. 1963 S. C. 1552	527
Rajinder Chand v. Musmad Sukhi A.I.R. 1957 S. C. 233	398
Rajinder Singh v. Deputy Custodian A.I.R. 1967 S. C. 145	400
Rajeshwar v. State of West Bengal A.I.R. 1965 S. C. 1887	461 76
Rajkumar v. State A.I.R. 1964 S.C. 1373	
Rajindra Swami v. Commr. H. R. C. E., A.I.R. 1965 S. C. 502	471

Raj Krishn Bose v. Binod Kanungo A.I.R. 1954 S.C. 202	14
Rajputana Agencies. Commissioner of Income Tax A.I.R. 1959 S. C. 265	31
Rajan Dass Swami v. Commissioner, H. R. E., A. I. R. 1965 S. C. 502	218
Rajuram v. State of Bihar A.I.R. 1964 S. C. 828	95
Raman and Raman v. State of Madras, A. I. R. 1959 S. C. 694 (1959) S. C. J. 1156 : (1959) Supp (2) S. C. R. 227	230, 470 479
Ram Avtar's Cases A. I. R. 1961 S. C. 1325	135
Ramapa v. Snagra 1959 S. C. R. 1167	368
Ramapra v. Bhojappa, A. I. R. 1963 S. C. 1632	395
Ramaswami Nader v. State of Madras, A. I. R. 1958 S. C. 255	21,129
Ram Chand v. Union of India A.I.R. 1963 S. C. 563	266,268
Ram Chandra v. State of Orissa, (1956) S. C. A. 346 : (1956) S. C. R. 28 : A. I. R. 1956 S. C. 298	145,168 509
Ram Chandra Prasad v. State of Bihar A. I. R. 1951 S. C. 1629, 19122 S. C. R. 50	79,294
Ram Dhad Das v. State of Punjab A. I. R. 1961 S. C. 1939	233
Ram Dial v. State of Punjab A. I. R. 1965 S. C. 1518	161
Rameshwar v. Commissioner of I. T. A. I. R. 1959 S. C. 498	209,213 235
Rameshwar v. State of Assam A. I. R. 1952 S. C. 405,	435
Rameshwar v. State of Assam (1953) S. C. R. 126 A. I. R. 1953 S. C. 304	131
Ram Jawaya v. State of Punjab, (1935) 2 S. C. R. 225 : (1955) S.C.R. 127 : (1955) S.C. 549	161, 179, 266, 271, 330, 331 332 533
Ram ji v. State of U.P. 1956 S.C.R. 393	
Ramji Lal v. Income Tax Officer, (1950-1951) C.C. 242 (1951) S.C.R. 127 (1951) S.C.J. 203 A.I.R. 1951 S.C. 91	121, 41, 357,
Ramji Lal v. State of U.P. A.I.R. 1956 S.C. 676	231
Ram ji Lal v. State of U. P. A.I.R. 1957 S. C. 620, 1957 S.C.R. 860 (1959) S.C.A. 157 : (1957) S.C. 890	75, 190, 244, 230, 253, 256, 297, 309
Ramji Lal v. Income Tax office Mohindergarh 1951 S.C.R. 127	506
Ramjanam v. Bihar State A.I.R. 1956 S.C. 643	453
Ram Krishan v. Delhi State, A. I. R. 1956 S. C. 478	80
Ram Kishore v. Union of India, A. I. R. 1966 S. C. 645	106

Ram Kishan v. State of Delhi, (1953 S.C. R. 708) A.I.R. 1953 S. C. 298	301
Ram Krishna Dalmia v. S. R. Tendolkar, (1958) S. C. A. 754 : A. I. R. 1958 S. C. 539 (1959) S. C. R. 279	154, 155, 512
Ram Kishan v. State of Delhi-A. I. R. 1956 S. C. 476	45
Rama Krishna v. State of Bihar A. I. R. 1963 S. C. 1667	246
Ram nandan v. Kapaldeen 1951 S. C. R. 133	17
Ramanfaya Singh v. Naif Nath Singh, A. I. R. 1954 S.C. 749	11
Ram Nandan Prasad Naryain Singh v. Kirpal, Rajee, A. I. R. 1951 S. C. 318	12
Ram Narayain v. Simla Banking and Industrial Co. Ltd., A. I. R. 1956 S. C. 61-A	38
Ram Parsad v. Stat. of Bihar (1953) S. C. R. 1129 (1953) S. C. J. 267 : A. I. R. 1953 S. C. 215 : (1953) S. C. A. 578 : (1952-54) C. C. 122	40, 143, 481
Ram Parsad v. State of Punjab, A. I. R. 1966 S. C. 1607	150
Ram Parsad v. State of Punjab, A. I. R. 1953 S. C. 215	141
Ram Parsad v. Vijay Kumar A. I. R. 1937 S. C. 276	18, 447
Ram Rattan v. Director of Employment, A. I. R. 1966 S. C. 495	78
Ram Saran v. C. T. O ; A. I. R. 1962 S. C. 1326 : (1962) 2 S. C. D. 192	448
Ram Saran v. State, A. I. R. 1959 S. C. 239	67
Ram Sarup v. Munghi A. I. R. 1963 S. C. 553, 65 P.L.R. 531, 1963 S. C. R. 728	219, 262, 263.
Ram Sarup v. Union of India A. I. R. 1963 S. C. 247	320
Ram Saran v. Deputy Inspector of Police A. I. R. 1964 S. C. 1559 (1965) S. C. D. 749	162, 178, 179.
Ram Singh v. State of Delhi, (1951) S. C. R. 451 (1951) S. C. J. 374 (1950-1951) S. C. 158 A. I. R. 1951 S. C. 270	122, 136, 181, 182, 283, 293, 295.
Ram Shankor v. State of U. P. A. I. R. 1956 S. C. 425	452
Rameshwar Bhatia v. State of Assam A. I. R. 1952 S. C. 405	409
Ram Vilas v. Chandar Shekharm A. I. R. 1965 S. C. 107	482, 483
Ratganathan v. Periakaruppen, A. I. R. 1957 S. C. 815	82
Ranger v. Great Western Railway Co. 1853-5-H.L.C. 89	490
Ranglidas v. Collector of Surat, A. I. R. 1961 S. C. 291 (1961) S. C. R. 951	337
Ranjit v. Commr. of L. T. A. A. I. R. 1962 S. C. 92	166
Ranjit v. State of Pepsu A. I. R. 1959 S. C. 843	497
Ranjit Singh v. State of Punjab, A. I. R. 1965 S. C. 632	219, 263, 317
Ranjit D. Udeghi v. State of Maharashtra A. I. R. 1965 S. C. 186	256
Rao Shiv Bahadur v. State of U. P. (1955) 2 S. C. R. 206 (1953) S. C. 1186	276, 460.

TABLE OF CASES

747

Raruha Singh v. Achal Singh A. I. R. 1961 S. C. 1097	426
Rasbar Nath v. The Commr of L. T. Delhi 1959 S. C. R. Supp (1) 578 A. I. R. 1959 S. C. 149	461
Rashid Ahmad v. Municipal Board of Kairana; (1950-51) C. C. 61 (63) : (1950) S. C. R. 568 : (1950) S. C. J. 324 : A. I. R. 1960 S. C. 163	123, 225, 242, 504, 505.
Rashid Ahmed v. M. V. K. Rana A. I. R. 1950 S.C. 163	236
Rattan Govd v. State of Bihar A. I. R. 1959 S. C. 21	427
Ratti Lal v. State of Bombay and Ors (1954) S. C. R. 1055 (1954) S. C. A. 538 : (1954) S. C. J. 480 A. I. R. 1954 S. C. 388	118, 303, 306.
Ratti Lal v. Ram Chand Bhai A. I. R. 1966 S. C. 441	442
Rattan Lvl v. State of Pnnjab A. I. R. 1995 S. C. 414	42, 273
Razia Begham v. Anwar, A. I. R. S. C. 886	442
R. B. Employees Association v. Reserve Bank A. I. R. 1966 S. C. 305	326
R. B. Sugar co. v. Rampur Municipality A. I. R. 1965 S. C. 893 .	730
R. D. Sons Ltd v. Assistant Sales Tax Officer A. I. R. 1935 S. C. 365	37
Regional P. F. Cover v. S. K. M. M. and Co. A. I. R. 1962 S. C. 1536	19
Raghubar v. State of U. P. 1958 S. C. petition No 202-4 of 1956	534
Rex v. Abdual Ajiz. 1949 F. L. J. 633	129
Rex v. Bridlugh 1973 3 Q. B. D 607	256
Rex v. Electricity Commissioner 1924 1 K B. 170	479
Rex v. Essex 1928 2. K. B. 575	490
Rex v. London County Council 191, 2. K. B. 215	479
Rex v. Sussex 1924 K. B. 257	492
Rizwan-Ul-Hussan v. State of U. P. 1953 S. C. R. 581 A. I. R. 1953 S. C. 185	257, 381
R. J. B. Singh v. State of U. P. A. I. R. 1952 S. C. 1563	312
R. K. Delima v. Delhi Administration A. I. R. 1912 S. C. 1821	75, 85
R. L. Arora v. State of U. P. A. I. R. 1964 S. C. 1210	40, 41, 42, 315.
R. M. D. C. v. State of Bombay A. I. R. 1957 S. C. 699	246
R. M. D. C. v. State of Mysore A. I. R. 1962 S. C. 594 1952 3 S. C. R. 230	24
R. M. D. v. Union of India (1957) S. C. A. 912 : A. I. R. 1957 S. C. 628 : (1957) S. C. 930	133, 134 233
Rohtas Industries Ltd. v. Brijnan Lal A. I. R. 1957 S. C. 6	430, 930
Romesh v. Gita Lal A. I. R. 1566 S. C. 1445	390
Romesh Thapar v. State of Madras, (1950) S. C. R. 594 : (1950) S. C. J. 418, A. I. R. 1960 S. C. 124	119, 127, 131, 184, 251, 252, 254, 268, 296, 355, 505.

Romesh v. State of Maharastra A. I. R. 1962 S. C. 19	90
Roshan Lal v. Iswar Dass A. I. R. 1962 S. C. 546 (1962) 2 S. C. R. 947	94
Roy v. State of Orissa, A. I. R. 1960 S. C. 190	257, 381.
R. P. Kapur v. Partap Singh Kairon, A. I. R. 1961 S. C. 1125	492
R. P. Kapur v. Partap Singh A. I. R. 1965 S. C. 295	23
R. P. Malhotra v. I. A. State A. I. R. 1964 S. C. 1976	81
Rup Chand v. Raghu Vanshi (P) Ltd A. I. R. 1964 S. C. 1889	58
Rattilal and. Co v. National security Assurance Co. Ltd A. I. R. 1964 S. C. 1396	77
R. P. Gandhi v. State of Bombay 1954 S. C. R. 1056	304
R. S. Kapur v. State of Punjab, 1955(2) S. C. R. 255	233
R. Nenkataswami Nedia v. Naresram Narandas, A. I. R. 1966 S. S. 361	17, 26.

S

Sadasive v. State of Orissa (1956) S. C. R. 4 A. I. R. 1956 S. C. 432	86, 215, 265, 509
Sadhu Ram v. Custodian General (1955) 2 S. C. R. 1113 S. C. A. 70	245, 313
Sadhu Singh v. State of Pepsu A. I. R. 1964 S. C. 271	416
Sadhu Singh v. Delhi Administration A. I. R. 1966 S. C. 96	497, 498, 510.
Sagar Ahmed v. State of U. P. and others (1955) 1 S.C.R. 707 : (1954) S. C. A. 1218 A. I. R. 1955 S. C. 728 (1954) S. C. J. 819 (1952-54) 2 C. C. 248 A. I. R. 1954 All 257	127, 129, 166 236, 241, 266, 268 270, 271, 310, 316.
Sahibzada Syed Mohd Ameerable Abbasi v. State of M. B. A. I. R. 1960 S. C. 68	507
Said Mohd v. State of Andhra 1954 S. C. 1117	133
Sainik Motors v. State of Rajasthan A. I. R. 1961 S. C. 1480	133
Sajjan Singh v. State of Punjab A.I.R. 1964 S.C. 454	42, 276
Sajjan Singh v. State of Rajasthan A.I.R. 1965 S.C. 849	454
Sajoo Prasad v. State of U.P. (1963) S.C.R. 324	16
Sakhwant v State of Orissa A.I.R. 1965 S.C. 166 (1955) S.C.A. 353 : (1955) S.C.J. 262 (1955) 1 S.C.R. 1004 : (1952-54) C.C. 155	142, 146, 22, 266 471
Saka Venkato Rao case 1953 S.C. 1949	
Sales Tax Officer v. Kanhaiya Lal A.I.R. 1959 S.C. 136, 1959 S.C.D. 135	28, 00
Sale tax Officer v. K.L.M.L. A.I.R. 1959 S.C. 135	27
Sales tax Commissioner v. Modi Sugar Mills A.I.R. 1961 S.C. 1047	33

TABLE OF CASES

749

Salmon v. Dumbcoinble (1886) 11 A.C. 624	534	13
Samalsavi v. Central Bank 1952 S.C.R.	391	118
Samuels v. McCurdy		209
Sangram v. Election Tribunal (1955) S.C.A. 545 : A.I.R.		
1955 S.C. 425		44
Sankar Balaji v. State of Maharashtra A.I.R. 1962 S.C.		
517		72
Santa Singh v. State of Punjab A.I.R. 1956 S.C. 526		451
Sant Ram v. Lahh Singh (1964) 7 S.C.R. 756 A.I.R. 1965		
S.C. 315	517, 263	
Sarju Prasad Sinha v. The State of U. P. and others		
A. I. R 1965 S. C 1768		483
Sarwat Singh v. State of Rajasthan, A.I.R 1961 S. C 715		
(1961) 3 S. C. R 126		92
Saravanabhava v. State of Madras A. I. R 1966 S. C 1973		454
Sarat Chander v. Khagendra Nath, A. I. R 1962 S. C 334		394
Sardar Inder Singh v. State of Rajasthan A. I. R 1952		
A. I. R 1952 S. C 510		165
Sardar Govida Raoji v. state of M. P., A. I. R 1965 S. C		
1222,		486
Sarup Singh v. State of Bombay A. I. R 1957 S. C 747		455
Saroop Singh v. State of Punjab 1959. 2 S. C. R 497,		
1960 1 S. C. A 163, A. I. R 1959 S. C 860	74, 805, 209	
Sarwan Singh v. State of Punjab A. I. R 1957 S. C 637		453
S. Asia v. Sarup Singh A. I. R. 1-66 S. C. 341		36
Sashi Mohan v. State of West Bengal A. I. R. 1958,		
S.C. 144		142
Satya Narayan v. Mail Naryian A. I. R. 1960 S.C. 137		476, 477
Satis Anand v. Union of India A. I. R. 1953 S.C. 250		
(1953) S.C.R.	1414, 176	
Satischandra v. Union of India (1952-54) 2 C.C. 587 :		
(1953) S.C. 655 A.I.R. 1953 S.C. 250		152, 517
Satwant v. State of Punjab A. I. R. 1960 S.C. 266		
(1960) S.C.J. 833		276
S. B. K. oil Co. v. Suhigh Chander A. I. R. 1951 S.C.		
159#		47
Scott v. Scott		58
S.C. Paraghar v. Vasant A. I. R. 1963 S.C. 1356	18, 19, 23, 53	
S. E. Stamping works Ltd. v. Workmen A. I. R. 1963		
S. C. 1916		443
Senior Electric Inspector v. Lakshmi Naryan Chopra		
A. I. R. 1962 S. C. 159		95
Seymour v. Butter Worth 1962 3 F & F		187
Sham Deo v. District Magistrate, A. I. R. 1952		
S. C. 324	19, 153	
Seth Bhikana Jaipuria v. Union of India		539
Sewpujan. v. Collector of Customs, A. I. R. 1958 S. C.		
845 (1959) S. C. R. 821	110, 156, 1-9,	
	211, 247,	
Shabadara S. Light Rly v. V. D. S. Mills 1960 2 S. C. R.		
926		17, 24

Shambhu v. State Bihar A.I.R. 1960 S. C. 725.	425
Shambu Lal Mehra v. State of Ajmer A. I. R. 1956 S. C. 404	45
Shenao v. D. M. Thana, 1952 S. C. R. 683 : (1952-54 C. C. 314 A. I. R. 1962 S. C. 324	45
Shanggo v. District Magistrate A.I.R. 1962 S.C. 324	294, 299.
Shankar Lal v. Shankar Lal A. I. R. 1965 S. C. 507	475
Shankari Prasad v. Union of India, A. I. R. 1961 S. C. 458 (1952) S. C. R. 89 (1950-11) S. C. 284	20, 51, 123 124, 312, 355 51
Shanno Devi v. Mangal Sein 1961 D. E. C. 53	79
A. I. R. 1961 S. C. 58	110
Shanti Prasad v. Directorate of Enforcement A. I. R. 1962 S. C. 1784	32, 165
Shanti Sarup v. Union of India A. I. R. 1965 S. C. 624	218, 313
Shanti Ranjan case Cri-App. No. 21 of 1960 dated 14th September, 1964	413
Sharma v. Satish (1954) S. C. R. 1077; (1954) S. C. A. 499 A. I. R. 1954 S. C. 300	278, 279, 280
Sheikh Gulfur v. Sant Kumar A. I. R. 1985 S. C. 1832	10
Sheshdhari v. D. M., A. I. R. 1954 S. C. 745, 1955, S. C. R. 886	129, 232 248
Shikshitar etc. State of Rajasthan and others 1959, Civil writ petition No. 34	281
Shivaji Nathubhai v. Union of India, A. I. R. 1960 S. C. 68 :	269, 482 485
Shivaji Nathu Bhai v. Union of India 1962 S. C. R. 775	423, 485
Shiva Lal Saxena v. State of U. P. A. I. R. 1964 S. C. 1/9	295
Shivenkata Veama Kata Verma Dewan v. The State of Mysore A. I. R. 1948 S. C. 255	306
Shivendra v. Nalanda College, A. I. R. 1962 S. C. 1210 (1962) 2 S. C. J. 208	499
Shivram Poddar v. Income Tax Officer A. I. R. 1964 S. C. 1096	467
Shiv Shankar Shukla v. A. D. Divkar 1957 S. C. R. 121	16
Shri Krishan Murti v. State of Orissa A. I. R. 1964 S. C. 1581	151
Shri Miuekahi Mills Ltd. Madunai v. A. B. Visvanathan, Shastri A. I. R. 1957 S. C. 13	142
Shri Ambica Mills Co. V. S. Bhut A. I. R. 1961 S. C. 970	476
Shri Ram v. State of Bombay, A. I. R. S. C. 670 : (1962) 2 S. C. R. 733	488
Shri Subbar manica Desiba v. State of Madras A. I. R. 1965 S. C. 1578	486
Shayam Lal v. State A. I. R. 1954 S. C. 369	68
Shyam Kishori Devi v. Patana Municipal Corporation A. I. R. 1966 S. C. 1678	29, 35

TABLE OF CASES

751

Shiv Badhaur Singh v. State of M. P. A. I. R. 1935 S. C. 394	145
Shiv Charao Singh v. State of Mysore A. I. R. 1959 S. C. 210	178
Sidharay Bhai v. State of Gurjat A. I. R 1963 S. C 54	209, 218
Sikandar Jihan v. State of A. P. A. I. R. 1962 S. C. 996	160, 123.
S. Krishan and others v. State of Madras 1951, S. C. R. 631, A. I. R. 1951 S. C. 301	284, 286, 293, 294 226
Smith v. Anderson	
S M. Transporter v. Sankarenswarmijal A. I. R. 1963 S. C. 864	209, 211
Sobibraj Jodharmal v. State of Rajasthan A. I. R. 1963 S. C. 944	388, 397.
Societe de Tractor v. Karani Engg. Co. A. I. R. 1964 S. C. 558	30
Sodhi v. Chief Justice (1954) S. C. R. 454	257, 381
Sodhi v. State of Pepsu A. I. R. 1954 S. C. 276	244, 249
Smt. Indermani v. I. T. Commissioner A. I. R. 1953 S. C. 89	429
Smt. Ujjam Bai v. State of U. P. 1963-1-SC 778	502, 554
Somawati v. State of Punjab A. I. R. 1963 S. C. 151	55, 83, 86.
Sonapur Tea Co. v. Deputy Commr. A. I. R. 1962 S. C. 137 (1962) 1 S. C. R. 724	262, 314, 316
South Asia Industries v. Sarup Singh A. I. R. 1966 S. C 532	484
Sovachani v. I. T. Commr. A. I. R. 1959 S. C. 59	428
Special reference No. 1 of 1964 A. I. R. 1974 S. C. 745	535
S. R. Chetty v. Phirozesbad Nussess vanji C. A. No. 155 of 1963 dated 5th April 1963	419
S. R. Tiwari v. District Board	68
Sri Gopal Jalan & Co. v. Calculate Stock Exchange Assoco Ltd. A. I. R. 1964 S. C. 200	51
Srikrishen v. State of Rajasthan (1956) S. C. A. 502 (1955) 2 S. C. R. 531	245, 262, 263, 494
Srifa v. State of Madras A. I. R. 1965 S. C. 1578	232
S. Srinivasan v. I. T. C. Madras A. I. R. 1967 S. C. 517	316
Sri Raja Venkata v. State of A. P. 1960 1 S. C. R. 552	
Srinivas Ram. Kumar v. Mahabir Parshad 1961 S. C. R. 277	
Sri Ram Narian v. State of Bengal, A. I. R. 1959 S. C. 459	18, 79
S. S. Gadigal v. M/s Lal and Co. A. I. R. 1965 S. C. 171	39
Sri Minakshi Mills v. I. Co., A. I. R. 1954 S. C. 496	441
Srinivas v. Naryan 1954 S. C. A. 878 (1959) 1 S. C. T. 1	446
Sri Ram v. State of Bengal A. I. R. 195 S. C. 459	11
Sri Ram Ram Naryan v. State of Bombay A. I. R. 1959 S. C. 459	14, 19
Shri Venkata Ravanoos Devark v. State of Mysore A. I. R. . 1948 S. C. 286	64, 88
Shri Ram Rao v. State of Andhra Pradesh A. I. R. 1963 S. C. 895	326

<i>S. S. Corporation of India v. Commercial Tax Officer</i>	109, 110, 111, 113, 126
<i>S. T. Swami v. Commissioner</i> 1963, 2 S. C. A. 340	
A. I. R. 1963 S. C. 973	240
<i>State v. Limsay</i> A. I. R. 1954 S. C. 20.	430, 431
<i>State v. Shivabassappa</i> A. I. R. 1963 S. C. 375	495
<i>State v. S. L. Appta</i> A. I. R. 1961 S. C. 578	460
<i>State v. Vaidy Natha</i> A. I. R. 1958 S. C. 16	433
<i>State of A. P. v. Abdul Khadder</i> A. I. R. 1961 S. C. 466	111, 112
<i>State of A. P. v. H. A. Bakshi and Bros</i> A. I. R. 1965 S. C. 531	53
<i>State of A. P. v. Rama Rao</i> , A. I. R. 1963 S. C. 1723	483 516, 430
<i>State of A. P. v. Venkatappaeyya</i> A. I. R. 1965 S. C. 779	93
<i>State of Assam v. Bimal Kumar</i> A. I. R. 1963 S. C. 1613	519, 528
<i>State of Assam v. Ajit Kumar Sharma</i> A. I. R. 1965 S. C. 1196	479, 500
<i>State of Assam v. Ramesh</i> (1932) 1 S. C. R. 986	384
<i>State of Bihar v. Basawan Singh</i> , A. I. R. 1958 S. C. 600	451
<i>State of Bihar v. Gopikishore</i> A. I. R. 1960 S. C. 698 (691)	525
<i>State of Bihar v. Hira Lal</i> A. I. R. 1960 S. C. 47 L (1960) : S. C. R. 726	37, 436
<i>State of Bihar v. Hurdut Mills</i> (1960) S. C. J. 255 (1960) 2 S. C. R. 331 L A. I. R. 1960 S. C. 378	129
<i>State of Bihar v. Rameshwar and others</i> , (1952) S. C. R. 889, A. I. R. 1952 S. C. 252 : (1952) S. C. J. 334 L	119, 133, 135 369
<i>State of Bihar v. Kameshwar</i> A. I. R. 1955 S. C. 575	469
<i>State of Bihar v. Kameshwar</i> , (1962) S. C. (Cr. S 242/60	243, 311, 312, 322
<i>State of Bihar v. Kirpa Sankar</i> , A. I. R. 1965 S. C. 282	113
<i>State of Bihar v. Rameshwar</i> A. I. R. 1961 S. C. 1649 (1962) 1 S. C. R. 152	314
<i>State of Bihar v. Ram Naresh</i> A. I. R. 1957 S. C. 389 (1957 S. C. R. 279	74
<i>State of Bihar v. Ram Naresh</i> A. I. R. 1957 S. C. 324	96
<i>State of Bihar v. R. P. N. Singh</i> 2 S. C. R.	317
<i>State of Bihar v. Shailbala</i> (1952) S. C. R. 654 (A. I. R. (1952) S. C. 329	251 252, 274
<i>State of Bombay v. Abraham</i> A. I. R. 1962 S. C. 794: (1962) Supp (1) S. C. R. 2	527
<i>State of Bombay v. Ali Gulshan</i> A. I. R. 1966 S. C. 810	34
<i>State of Bombay v. Atmaram</i> (10-1951) C. C. 135 (1951) S. C. R. 157 (1951) S. C. J. 208, A. I. R. 1561 S. C. 157 255: 310	255, 257, 258

State of Bombay v Bhanji and another (1959) S C R 777 (1959 S C 41 (1952 54) 2 C.C 436 (433)	210, 315
State of Bombay and another v. Balsara, (1951) S C R 682 A I R (1951) S C 318 (1951) S C J 141 (1950 61) C C 308	112, 123, 127, 233 134, 42, 261 371 245, 2, 2, 432 311
State of Bombay v. B Munji, A. I R 1955 S C 41	
State of Bombay v. Bombay Education Society, (1953) 1 S C R 568 A. I R (1954) S C 787 (1952 54) 2 C. C 436 A. I R 1954 S C 561	173, 307, 308
State of Bombay v. Chamarbaugwala A I R 1957 S C 669 (1957) S C R 874 A. I R 1957 Bom I (77) A 1 56 Bom. I (17)	41, 43 130 70
State of Bombay v. Faquir Chand A I R 1961 S C 722	12 14, 73
State of Bombay v. F. N. Balsara A I R 1957 S. C 318	74, 226
State of Bombay v Hospital Mazdoor Shaba A I R 1960 S C 610	
State of Bombay (Gurajat) v Jagmohan Dass, A I R 1965 S C 1412	70 388 280
State of Bombay v. Kator A I R 1961 S C 1808	
State of Bombay v Manji A I R 1956 S C 294 (1956) S C R 18	311
State of Bombay v Pandurang, (1953) S C R 773, A I R 1963 S C 245	40
State of Bombay v. Prishottam (1952) S C 503 A I R 1952 S C 317 (1952) S C R 674	334, 335 340 233, 267
State of Bombay v. R M D AIR 1927 S C 639	18
State of Bombay v. R Nagi 1959, S C R. 18	
State of Bombay v. Rusy Mistry A I R 1960 S C 319	451, 423, 1450
State of Bombay v R N Nair A I R 1956 S. C. 294	49
State of Bombay v T. A Abbram A I R 1952 S C 794	87
State of Bombay and another v United Motors and others (1954) S. C. A 5408 : 91953) S C. J 373	13, 31, 34, 35, 36, 46, 47, 132 134, 154, 157 506 507, 532 36
State of Bombay v. Vir Kumar A. I R 1952 S C 335	
State of Bombay v. Visnu Ram Chandra A I R 1961 S C. 307	436
State of Delhi v Shri Ram A. I R 1960 S C 490 (1959) Supp (1) S C R 787	453 98
State of Gujarat v Badbodin Mithilashwala A. I R 1964 S C 54	96
State of Gujarat v Jagenbhi A. I R 1966 S. C 1631	34
State of Gujarat v Shyam Lal A. I R 1965 S C 125	103, 104
State of Gujarat v Vora Fiddah, A. I R 1964 S. C 1043	384 394
State of J & K v Ganga Singh A I R 1960 S. C 336 128, 983, 384 394	506
State of J & K v Ghalam A I R 1961 S C 1301 S.C.R 969	233
State of Kerala v Joseph AIR 1953 S C 296	
State of Madras v. Champalram (1951) S. C. R 525 : (1951), S C. J 313 A I R 1951 S C 226 - (1951), M L J. 621 (1950-51), C. C 183	120, 121, 172 308, 309, 323 326

State of Madras v. Dunkerley and Co A. J. R 1958 S. C. 560 (1959) S. C.R. 379	227
State of Madras v. D. Vamaswamy A. I. R 1965 S. C 160	315
State of Madras v. Gamon A. I. R 1958 S. C 560	89
State of Madras v. G Sunde Ram A. I. R 1965 S. C 1103	475, 485
State of Madras v. Kannepalli A. I. R. 1962 S. C. 1687 : (1963) 1 S. C. R. 155	215
State of Madras v. Row A. I. R. 1952 S. C. 196 : (1952) 2 S. C. R. 597 (1952-54) 2 CC 169	127, 187, 195, 197, 223, 241, 243, 244, 248, 247, 259
State of Madras v. Raj Gopalan, (1925) 2 S. C. R. 541 : A. I. R. 1955 S. C. 817	20, 528
State of Madras v. Thia-garajan A. I. R. 1963 S. C. 111,	487
State of Madras v. U. P. Tothev (1959) S. C. R. 1191	500
State of Madras v. Vaidyanatha, A. I. R. 1958 S. C. 61	91
State of Madras v. V. G. Rao A. I. R. 1952 S. C. 196	127
State of Maharashtra v. Mohd Abdullah A. I. R. 1962 S. C. 445	394
State of Maharashtra v. M. H. George A. I. R. 1965 S. C. 722	55 149
State of Maharashtra v. P. P. Sanzgiri and others	181
State of Maharashtra v. M. S. Association A. I. R. 1963 S. C. 625	79
State of Maharashtra v. Baldeo A. I. R. 1961 S. C. 293	196, 243 217
State of Maharashtra v. Prabhkar Pandurany	190 546
State of M. P. v. Bhopal Sugar Industries A. I. R. 1954 S. C. 1179	149, 161
State of M. P. v. Champa Lal A. I. R. 1965 S. C. 124 ; 1964 (8) S. S. R. 35	218
State of M. P. v. Vishnu Prasad A. I. R. 1966 S. C. 1953	32
State of M. P. v. Chanyaki A. I. R 1965 S. C 124	248
State of M. P. v. Gwalior Sugar Co. Ltd 1962 2 S. C. R 619 149, 533	
State of Mysore K. N. Chandreshkhara A. I. R 1965 S. C 532	471
State of M. P. v. Bhai Lal Bhai A. I. R 1964 S. C 1006	475, 500
State of M. P. v. Mandawar (1954) S. C. A 757 : A. I. R 1954 493 : 1954) 1 S. C. R 493 (1954) 1 S. C. R 599 (1952-54) 2 C. C. 137	122, 136, 144 146, 148, 500
State of M. P. v. Peer Mohammed A. I. R 1963 S. C 642	113
State of M. P. v. Shobha Ram & others	287
State of Mysore v. Chablani A. I. R 1958 S. C 325	385
State of Mysore v. K. N Chandra Sebhra A. I. R 1963 S. C 151	59
State of Nagaland v. Rattan Singh A. I. R 1967 S. C 212	145
State of Orissa v. P. K. Bose A. I. R 1962 S. C 945	534
State of Orissa v. Debaki Debi AIR 1984 S. C 1413	37
State of Orissa v. Dharendranath, A. I. R 1961 S. C 1715	522
State of Orissa v. Durga Charan Dass A. I. R 1966 S. C 1547	399
State of Orissa v. Govinda Das (1958) S. C (C/A) 412/58	517
State of Orissa v. Madangopai A. I. R 1952 S. C 13 : (1952 S. C. R 28	132, 383, 488
State of Orissa v. (Miss) Binapani devi A. I. R 1967 1269	466, 495

State of Orissa v. (Miss) Binapani Devi, A. I. R. 1967 S. C. 1269	466, 495
State of Orissa v. Murlidar, A. I. R. 1964 S. C. 865	489
State of Orissa v. Ram Narayan, A. I. R. 1961 S. C. 177 (180)	517, 520, 527
State of Orissa v. Pullock, (1954) S. C. 1284 (Petn 236/60)	46
State of Orissa v. Vidyahhusan, A. I. R. 1963 S. C. 789	522
State of Punjab v. Ajaib Singh (1953) S. C. R. 254 : A. I. R. 1953 S. C. 510	20, 145, 15 256, 289, 294, 298
State of Punjab v. Barhat Ram, A. I. R. 1962 S. C. 276	85
State of Punjab v. Shadi Lal, A. I. R. 1960 S. C. 397	413
State of Punjab v. Joginder, A. I. R. 1963 S. C. 913	152, 154, 177, 438
State of Punjab v. Jullundur Vegetables Syndicate, A. I. R. 1966 S. C. 1295	32
State of Punjab v. O. G. Syndicate, A. I. R. 1964 S. C. 449	48
State of Punjab v. Sodhi Sukhdev Singh, A. I. R. 1961 S. C. 493	28, 50 96, 341, 529
State of Punjab v. Suraj Parkash, A. I. R. 1963 S. C. 507	489
State of Rajasthan v. Jawala (1959) Supp. (I) S. C. R. 904; A. I. R. 1959 S. C. 544 (1959) S. C. J. 485	258, 297
State of Rajasthan v. Karan Chand and Bros., A. I. R. 1965 S. C. 913	435
State of Rajasthan v. Manohar (1954) S. C. R. 996 : (1954) S. C. A. 491; A.I.R. (1951) S.C. 297 (1952-54) 2 C. C. 133	133, 145
State of Rajasthan and others v. Nathmal (1954) S. C. R. 982 (1954) S. C. A. 347, A. I. R. 1954 S. C. 307 (1952-54) 2 C. C. 239	232, 262, 26 267, 311
State of Rajasthan v. Partap Singh, A. I. R. 1960 S. C. 1323	341, 342
State of Rajasthan v. Ram Saran, A. I. R. 1964 S. C. 1361 (1963) S. C.	39
State of Rajasthan v. Vidyawati, A. I. R. 1962 S. C. 933	540
State of Seraikella v. Union of India (1951) S. C. R. 488, A. I. R. 1951 S. C. 253 (1 51) S. C. J. 425 : (1950-51) C. C. 261	84, 382
State of Trav. Cochin v. Bombay Co. (1932) S. C. 366	22, 25
State of Trav. Cochin v. Cashonut Factory. A. I. R. 1953 S. C. 333	73, 74
State of Tripura v. West Bengal, A. I. R. 1961 S. C. 23 (1950) S. C. R. 1	539
State of U. P., v. Abdus Samad, A. I. R. 1962 S. C. 1506	288

State of U. P. v. Col Sajjan Singh, A. I. R. 1964 S. C. 1897	71
State of U. P. v. Babu Ram A. I. R. 1961 S. C. 751 (763-5)	47, 343
State of U. P. v. Basti Sugar Mills 1961, 2. S. C. R. 330 : A. I. R. 1961 S. C. 420	232, 267
State of U. P. v. Deoman Ram, A. I. R. 1960 S. C. 1125	122, 155
State of U. P. v. Jogendra, A. I. R. 1963 S. C. 913,	31
State of U. P. v. Kartar Singh, A. I. R. 1934 S. C. 1135	164, 204, 205
State of U. P. v. Kaushalya, A. I. R. 1964 S. C. 416	142, 235, 259 260, 261
State of U. P. v. Manbodhan Lal, A. I. R. 1957 S. C. 912	78, 531 336
State of U. P. v. Mohd. A. I. R. 1934 S. C. 703	
State of U. P. v. Nooh, A. I. R. 1958 S. C. 86 (1958) S. C. R. 595 (601)	472
State of U. P. v. Mohammad Nooh (1958) S. C. A. 73 A. I. R. 1958 S. C. 86 (1958) S. C. J. 242 (1958) S. C. R. 595	387, 468, 491
State of U. P. v. R. B. Aggarwal, A. I. R. 1966 S. C. 1135	413 316
State of U. P. v. Moradbaji Singh, 1960 S. C. R. 106	
State of West Bengal v. Anwar Ali Sarkar (1952) S. C. R. 284 : A. I. R. 1952 S. C. 75 (1952) S. C. A. 148 : (1952) S. C. J. 55 : (1952-54) 2 C. C. 50	141, 143, 144, 147, 154, 155 157, 159, 242
State of West Bengal v. Bela Banerjee and others 1954 S. C. R. 558 (1954) S. C. A. 41 (1954) S. C. J. 95, A. I. R. 1954 S. C. 170	311, 316
State of West Bengal v. B. K. Mondal, A. I. R. 1962 S. C. 779	20, 539
State of West Bengal v. B. K. Mondal and Sons, A. I. R. 1962 S. C. 779	77
State of West Bengal v. Naranjan Nath, A. I. R. 1966 S. C. 447	23
State of West Bengal v. S. G. Bose, A. I. R. 1954 S. C. 92	210
State of West Bengal v. Subodh Gopal, A. I. R. 1954 S. C. 92, 1954 S. C. R. 587	14, 22, 209, 210, 245, 312 316
State of West Bengal v. S. K. Gohsh, A. I. R. 1953 257	276
State of West Bengal v. Union of India A. I. R. 1963 S. C. 1241	23, 24, 98, 533

State Trading Corporation v. Commercial Tax Officer A. I. R. 1963 S. C. 1811	108
S. T. Corpn of India. Commercial Tax Officer A. I. R. 196 S.C. 1811	79, 183, 184, 211, 212, 215, 226
Stephen Scentratne v. The King A. I. R. 1936 P.C. 289	433 409
Stephor v. The King A. I. R. 1935 P.C. 289	38
Stephonson v. Taylor (1651) I B & S 101	
S. T. Swarniar v. Commissioner 1963 2 S.C.A. 340 A. I. R. 1963 S.C. 966	86, 266
Suba Rao V. Income Tax Commissioner A. I. R. 1956 S.C. 605	84 532
Subarnaium v. Mottu Swami A. I. R. 1941 F. C. 532	43
Subarmainium v. Mottuswami Gounder 1940 F.C.R. 188	500
Sugam Mull v. State of M. P. A. I. R. 1963 S.C. 1740	387
Sudhan Sukher v. State of Orissa A. I. R. 1961 S.C. 199	362
Sudhindara v. Commissioner A. I. R. 1963 S.C. 966	456
Sukha v. State of Rajasthan A. I. R. 1956 S.C. 513	
Sukhwant Singh v. State of Punjab A. I. R. 1962 S C. 711	526, 528
Sukhpal Singh v. Kalyan Singh A. I. R. 1963 S.C. 146	436, 437
Sundra Ramir v. State of A. P. A. I. R. 1958 S.C. 469	77
Sunil Kumar v. State of Bengal A. I. R. 1965 S.C. 706	94
Superintendent v. Ram Manohar A. I. R. 1960 S.C. 633	249, 253, 256, 258, 260, 297,
Supdt. Central Prison Fatehgarh v. Ram Manohar Lohia 1963 2 S.C.R. 1821	188, 189 129
Suraj Mull v. Vishva Nath A. I. R. 1954 S.C. 545	209
Suriya Pal v. State of U.P. 1952 S.C.R. 1056	447, 412
Surindra Nath v. Dalip Singh A. I. R. 1957 S.C. 245	448, 501
Surindra Nath v. Stephen A. I. R. 1966 S.C. 1361	536
Surindra Singh v. State of U. P. A. I. R. 1954 S.C. 194	
Surindra Singh v. State of U. P. A. I. R. 1956 S.C. 411 (1954) S.C.R. 320	75, 411, 404, 411
Surasalvalahi v. Phinendra Mohan A. I. R. 1965 S.C. 1364	430
Sutton v. Mary Ann. Bergus 1835 149 E. R. 1291	59
Swami v. State A. I. R. 1960 S.C. 7	642
Swami Motor. Transport (P) Ltd. v. Shri Shankara	72
Swami Dal A. I. R. 1963 S.C. 864	413

T

Tara Chand v. State of Maharashtra, A. I. R. 1962 S. C. 130	49, 402, 403
Tara Pada De v. State of West Bengal, 1951 S. C. R. 22 A. I. R. 1951 S. C. 274	295, 298, 301 287
Tara Singh v. The State, A. I. R. 1958 S. C. 441	

Tata Iron and Steel Co. v. S. P. Sarkar, A. I. R. 1961 S. C. 63	507
Iron and Steel Co. v. State of Bihar 1958 (1) S.C.R. 1355	535
Abraham v. Regional Transport Authority, A. I. R. 1953 S. C. 79	448
T. C. Dassappa v. T. Nagappa 1955 1 S. C. R. 250, A. I. R. 1954 S. C. 448	83, 466
T. D. Gopalan v. Commissioner H. R. C., A. I. R. 1966 S. C. 1935	392
T. Guzzi v. Bor mosim 1961 S. C. R. 750	161, 179
Tehri v. District Board A. I. R. 1954 S. C. 630	2
Thir Hussain v. D. V. Maysortee, A. I. R. 1951 S. C. 630	236
Thir Saifuddin v. State of Bombay, A. I. R. 1958 S. C. 253	380
Tikka Ram v. State of U.P., A. I. R. 1956 S. C. 676, 1956 S. C. R. 393	231, 247, 266, 167, 446
Tikka Ram and Sons v. Workmen, A. I. R. 1960 S. C. 198	18
Thakur Amar Singh v. State of Rajasthan, A. I. R. 1955 S. C. 504	-
Thangal Punju v. M. Venkatobalal, A. I. R. 1956 S. C. 240	71, 485
Than Singh v. Suptd. of Taxes, A. I. R. 1964 S. C. 1422	339
The Deputy Director Consolidation U. P. case, A. I. R. 1967 S. C. 1272	476
The Glass Charton Imports Association v. Union of India, A. I. R. 1961 S. C. 1514	236, 26
The Kesho Mills Ltd. Patal v. The Commr. of Income Tax Bombay North, A. I. R. 1965 S. C. 1636	459
The King v. Southampton Income Tax Commr. 1916 2 K. B. 49	44
Lord Krishna Sugar Mills Ltd. v. Union of India, A. I. R. 1959 S. C. 1125	86, 230, 243, 310, 496
The New Parkash Transport Co., Ltd's Case S.C.R. 98	168
The Northern India Cattle (P) Ltd., State of Punjab A. I. R. 1963 Pb. 290	356
The Queen v. Richards 1955, 92 C. L. R. 57	100
The Vice Chancellor Utkal University and another v. S. K. Ghosh 1954 S.C.R. 383	416
Thever v. State of Madras A. I. R. 1957 S.C. 612	439, 441
Thunga Badhra Industries v. Govt. of A. P. A. I. R. 1965 S.C. 1303	448
Tilkashwar v. Bihar State A. I. R. 1956 S.C. 238	13
Talka Gobind Lalji Maharaj v. State of Rajasthan A. I. R. 1953 S.C. 1938	148, 304, 309
Tilkayat Shri Gobind Lal Ji Maharaj v. State of Rajasthan A. I. R. 1963 S.C. 1638	132
Tilston v. Ullman 1943 U. S. 44	40
Tirath Singh v. Bachittar Singh A. I. R. 1955 S.C. 680	21, 22, 147
T. K. Musaliar v. Venkatachalam A. I. R. 1956 S.C. 246	

TABLE OF CASES

759

Tela Ram v. State of Bombay A. I. R. 1955 S.C. 496	33
T. P. Dewan v. Lodge Victoria A. I. R. 1963 S.C. 1145	396
Pram Sagar v. Standard Vaccum oil Co. A. I. R. 1965 S.C. 111	485
T. Raja Ram v. Radhkrishanaya A. I. R. 1965 S.C. 1795	392
Travncore Rubber and Tea Co. Ltd. v. State of Kerala A. I. R. 1964 S.C. 572	151
T. V. V. Narasinkaw v. State of, Orissa A. I. R. 1963 S.C. 1227	400
Trichinopoly Mills Ltd., v. Workers Union A. I. R. 1960 S.C. 1005	442
Triplex Glass Comany v. Lancgaya Glass Limited, 1939 2 All E. R. 630	279
U	
Udit Narain v. Board of Revenue A. I. R. 1963 S.C. 750	487
Ugar Abir v. State of Bihar A. I. R. 1965 S.C. 277	94
Ujjagar Singh v. State A. I. R. 1950 S.C. 350	345
Ujjain Bhai v. State A. I. R. 1962 S.C. 1621	512
Umaid Sills v. Union of India A. I. R. 1963 S.C. 1953	537
Umeg Singh v. State of Bombay A. I. R. 1965 S.C. 540	537
Umeng Singh v. State of Bombay 1955 (2) S.C.R. 164	505
Umehi State of Kerala A. I. R. 1962 S.C. 12	262
Union of India v. Bhana Mel Gulzari Mal Ltd. 1960 (2) S.C.R. 627	232
Union of India v. Chamao Lal A. I. R. 1953 S.C. 652	538
Union of India v. D. C. M. A. I. R. 1963 S.C. 791	72
Union of India v. H. C. Goel A. I. R. 1964 S.C. 364	523
V	
Vagravan v. N. T. C. Talkies A. I. R. 1964 S.C. 1440	263
Vadan Chi v. Sp. Deputy Collector A. I. R. 1953 S.C. 1017	47
Vajesingh v. Secretary of State A. I. R. 1934 P.C. 216	104
Vajiaveh v. Sp. Dy. Collector A. I. R. 1963 S.C. 1017	36
Varindra Singh v. State of U.P. A. I. R. 1954 S.C. 447	312, 382
Vellu Kuvab v. Reserve Bank of India A. I. R. 1962 S.C. 1371	28, 122
Vennappa Mallaya v. T. Ramaswami and Co. A. I. R. 1964 S.C. 82	431
Venkata Raman Devaru v. State of Mysore A. I. R. 1953 S.C. 255	78
Venkata ramaya v. State of Madras A. I. R. 1958 S.C. 229	176
Venkata Reddy v. Pethi Reddy A. I. R. 1963 S.C. 992	71
Venkata Raman v. Union of India A. I. R. 1954 S.C.R. 1150 A. I. R. 1954 S.C. 375	273, 275, 277
Venkoto Mallayya v. T. Rama Swami and Co. A. I. R. 1964 S.C. 818	287
Vidhya v. Shri Naryan Verma 1955 2 S.C.R. 1983	72
Vidya Charan v. Sarup Chand A. I. R. 1964 S.C. 1099	138
Vidya Verma v. Shiv Narain A. I. R. 1954 S.C. 108	263
Vierappa v. Raman 1952 S.C.R. 585	
Vijay cotton mills Ltd. v. State of Ajmer A. I. R. 1953 S.C. 3	233, 267

Tata Iron and Steel Co. v. S. P. Sarkar, A. I. R. 1961 S. C. 69	507
Tata Iron and Steel Co. v. State of Bihar 1958 (1) S.C.R. 1355	535
T. B. Ibrahim v. Regional Transport Authority, A. I. R. 1953 S. C. 79	448
T. C. Dassappa v. T. Nagappa 1955 1 S. C. R. 250, A. I. R. 1954 S. C. 448	83, 468
T. D. Gopalan v. Commissioner H. R. C., A. I. R. 1966 S. C. 1935	392
T. Guzzi v. Bor mosim 1961 S. C. R. 750	161, 179
Tehri v. District Board A. I. R. 1954 S. C. 630	2
Thir Hussain v. D. V. Maysonce, A. I. R. 1951 S. C. 630	236
Thir Saifuddin v. State of Bombay, A. I. R. 1958 S. C. 253	380
Tikka Ram v. State of U. P., A. I. R. 1956 S. C. 676, 1956 S. C. R. 393	231, 247, 266, 267
Tikka Ram and Sons v. Workmen, A. I. R. 1960 S. C. 198	446
Thakur Amar Singh v. State of Rajasthan, A. I. R. 1955 S. C. 504	18
Thangal Punju v. M. Venkatahalal, A. I. R. 1956 S. C. 240	71, 489
Than Singh v. Supt. of Taxes, A. I. R. 1964 S. C. 1422	338
The Deputy Director Consolidation U. P. case, A. I. R. 1967 S. C. 1272	478
The Glass Chaiton Imports Association v. Union of India, A. I. R. 1961 S. C. 1514	236, 26
The Kesho Mills Ltd. Patal v. The Commr. of Income Tax Bombay North, A. I. R. 1965 S. C. 1636	459
The King v. Southampton Income Tax Commr. 1916 2 K. B. 49	44
Lord Krishna Sugar Mills Ltd. v. Union of India, A. I. R. 1959 S. C. 1125	86, 230, 243, 310
The New Parkash Transport Co., Ltd's Case S.C.R. 98	496
The Northern India Cattle (P) Ltd., State of Punjab A. I. R. 1963 Pb 290	168
The Queen v. Richards 1955. 92 C. L. R. 57	356
The Vice Chancellor Utkal University and another v. S. K. Ghosh 1954 S.C.R. 383	400
Thever v. State of Madras A. I. R. 1957 S. C. 612	416
Thunga Badhra Industries v. Govt. of A. P. A. I. R. 1965 S. C. 1303	439, 441
Tilkashwar v. Bihar State A. I. R. 1958 S. C. 238	448
Tilka Gobind Lalji Maharaj v. State of Rajasthan A. I. R. 1953 S. C. 1938	13
Tilkayat Shri Gobind Lalji Maharaj v. State of Rajasthan A. I. R. 1963 S. C. 1638	148, 304, 309
Tilston v. Ullman 11943 U. S. 44	132
Tirath Singh v. Bachittar Singh A. I. R. 1955 S. C. 880	40
T. K. Musaliar v. Venkatachalam A. I. R. 1956 S. C. 246	21, 22, 147

SUBJECT INDEX

Note Figures denote pages

Abatement

Sentence of fine, appeals do not abate, 411, 412

Absolute Equality

What is, 141

Acquire

Meaning of, 208

Acquisition

What is property, 310

Acquisition, 311

Taxing law, 312

Money cannot be acquired, 312

Change of management is not acquisition, 312

Private action cannot be challenged, 312

Administrative order is of no value, 312

Illegal Seizure, 313

Some Cases, 313

Acts which are valid, 314

Some invalid Acts, 315

Amendment of Article 31, 316

Power to examine law of acquisition, 317

Article 31 A does not revive void laws 316

Laws under which estates etc. are acquired, etc. are valid, 316

Estates and rights in Estate, 317

Transfer of shamlat land etc to Panchayat is valid, 317

Taxation laws, retrospective effect, 317

Acquittal

Does not mean complete acquittal, 401

Acquired territory

What is, 102

Assimilation of, 103

Rights of person of, 103

Acts of accession

Power to go into, 382

Additional grounds

When can be urged, 405

Adequate remedy

And article 32, 466, 505

Adjournment

Not granted, article 136 if apply, 438

Administrative bodies

What are, 479

Administrative order

What is, 476

Order confirming sale, 474

Distinction between judicial order, 420

Adoption

Is a question of fact, 396

Vijay Singh v. State of Maharashtra	A.I.R. 1966 S.C. 141	474
Vajindra v. State of U. P.	A. I. R. 1963 S.C. 247	279
Vira vala v. State of Surashtra	1960 3 S. C. R. 52, 521	
A. I. R. 1967 S. C. 334		209, 216
Virendra v. State of Punjab	A. I. R. 1957 S. C. A. 96	78, 184, 241, 243, 245, 247, 248, 249, 250, 262, 297
Virendra Kumar, A. I. R. 1957 S. C. 153		501, 76
Virendra v. State of U. P., A. I. R. 1953 S. C. 247		279
Virginia v. Rices	1818, 100 U. S. 313	118
Vishashwar v. State of U. P.	1952 S. C. R. 1020	151
Vishnu Nath v. Abdul Mazid, A. I. R. 1963 S. C. 1		398
Vishwa Nath v. State of U. P., A. I. R. 1960 S. C. 67		285
V. M. Sarjan wala v. State of Bombay	1961 S. C. R. 341	314
V. M. Syed Mohd. v. State of Andhra, A. I. R. 1954 S. C. 314		25, 143, 157
V. S. Rice oil Mills v. State of Andhra Pradesh, A. I. R. 1954 S. C. 1781		46, 161, 264
V. V. Guri, A. I. R. 1962 S. C. 418		372
W		
W. A. Electric Distributing Co. v. State of Madras, A. I. R. 1962 S. C. 1753		311
Wajir Chand v. State of H. P., A. I. R. 1954 S. C. 415 ; 1959 (1) S. C. R. 408		313, 481
Waram Shrivos v. R. B. & Co., A. I. R. 1959 S. C. 689		95
Waverly Jute Mills v. Rayman and Co. 1963 S. C. 90		40, 141
West Derby Union v. Metropolitan Life Insurance society (1897) A. T. 647		28
Western India Tweter Ltd. v. Cantonment Board, A. I. R. 1959 S. C. 582		164
West Ramanad Electric Distribution Co. v. State of Madras 1963, 2 S. C. R. 797		275
W. H. King v. Republic of India, A.I.R. 1952 S. C. 156		33
W. I. Theaters v. Municipal Corporation Poor, A. I. R. 1959 S. C. 586		79
White v. White, A. I. R. 1958 S. C. 441		90
Whitney v. Commissioner of Inland Revenue (192) 10 to Tara cases 88		29
Western India Match Co. v. Industrial Tribunal Madras 1962 Lab. L. J. 632		496
Workmen v. Bangalore W. C. J. S. Mills Co. A. I. R. 1962 S. C. 1363		89
Workmen v. Motipur Sugar Factory, A. I. R. 1965 S. C. 1903		429
Y		
Yakus v. United States 321, U. S. 414		131
Yasin v. Town Area Committee, A. I. R. 1952 S. C. 115		
1952 S. C. R. 592		242, 270
Y. Narayana Chetty v. The Income Tax Officer, A.I.R. 1959 S. C. 213		497
Yusuf v. State of Bombay, A. I. R. 1954 S. V. 321		
1954 S. C. R. 930		172, 174
Z		
Zabar Singh v. State of U. P., A. I. R. 1957 S. C. 466		455

Article 133, 390

Difference between order granting leave and certificate effect, 391

Court immediately below, meaning of 391

Affirmance and variance, minor change will amount to variance, variance as to costs not covered 392

Tests as to valuation 392

Right of Appeal to be governed from the date when *lis commences*, 392

Remand order is not a final order, 393

Decision rendered in advisory or consultative Jurisdiction, 393

Criminal appeals

Acquittal, does not mean complete acquittal 402

Case, meaning of 402

Certify, meaning of 403

Writing leave granted not enough, 403

Certificate should give reasons, 404

Certificate should be given with circumspection, 404

Certificate cannot be granted on the ground that points raised were not mentioned in judgments, 405

Certificate cannot be granted merely because the bench hearing the appeal summarily dismisses it and the High Court feels that the case needs further examination, 406

Judicial Commissioners cannot certify the case on the ground that there is no division bench to dispose off the case 406

Certificate should be granted only when there is substantial question, 406

Certificate defective—Special leave can be given 407

See question of fact

Special leave appeal

Article 135 is not subject to any statute, 415

Supreme Court is not a regular Court of Appeal 415

Scope in proceedings arising under Article 227, 416

Scope of Article 136 does not depend on the order granting leave, 416

Scope in appeals arising out of article 226 416

Every decision is not subject to appeal under article 136 416

No failure of Justice effect 417

Certificate by High Court cancelled, special leave granted 417

Decisions of Privy Council may be useful while exercising power under Article 136, 417

Special leave when to be granted if the procedure laid in a statute is sought to be bypassed 417

Attempt to mislead the Court, leave may not be granted and if granted may be revoked, 418

Reason for dismissal of application special leave need not be given, 419

Constitutional appeals

General, 382

Judgment, 383

Final order, 383

Other Proceedings, 383

Advertisement

If can be controlled 185,

Advisory jurisdiction

Of Supreme Court, 459

Decision cannot be called final, 393

Advocate

Right to assist the client is uncontrolled by Article 194, 357

Affirmance

What is, 392

Against whom can be enforced

See page, 121

Age

Of High Court judges, 509

Allocation

Can be made in advance, 137

Alternate Relief

Can be claimed, 490

Alternate Remedy

If bars writs, 466, 506

Amendment

Sajjan's case, a review, 550

Shankri Prasad's case, a review 550

Fundamental rights enjoy transcendental position, 552

Fundamented rights are beyond the reach of Parliament 552

Paramountancy of Fundamental Rights 553

Amendment subject to article 13, 553

Amending process involves no political question, 554

Constituent Assembly can be called, 554

Four methods of amendment, 555

Golak Nath's case, a review, 555

Prospective over-ruling, 555

Applies to pending proceedings, 47

Amendment of Article 31, 316

of Article 1, 101

American decision

See Foreign decision

When to be followed, 122

Appeals

See Discretion

Appeals in Supreme Court**Civil Appeals**

General, 389

Article 133 is prospective 389

Judgement restoring the decree passed in 1946 is appealable
399

Scope in appeals from judgements passed under Article 226
389

Scope of Article 133 cannot be restricted by a statute 390

Certificate under Article 133 may not be obtained if the
practice of the Court so permits, 390

Matters involving revenue is a civil proceedings even when
brought before the High Court under Article 226. 390

Limited certificate cannot be issued by High Court under

- Person entitled to no pay if he does not join, 522
 Merger, effect on servants, 522
 Pleasure of President, meaning of, 522
 Rules should not violate fundamental rights 522
 Minimum age of retirement should be fixed by rules, 522
 Resignation, article 311 does not apply, 523
 Protection of Article 311, when available, 523
 Reversion from temporary post not per se reduction in rank, 523
 Rule of pleasure of crown not adopted in India, 523
 High Court can suspend a judicial officer pending final order by Government 523
 Rules framed in 1955 under an act in 1951 when there was no Council of States, are not repugnant of Article 312 524
 Members of Secretary of State Services enquiry under rules 55 of the (Classification Control and appeal) Rules not essential, 524
 Pension, reduction in pension is not reduction in rank, 526
 Probationer, casting aspersions no opportunity given to rebut the aspersions, discharge is bit by Article 311, 526
 Demonstration cannot be banned, 525
 Government servants enjoy all fundamental rights, 525
 Suspension in second inquiry, can be imposed, 523
 Civil Procedure Code, order 2 Rule 2, the bar of order 2 is not applicable to Article 226 526
 Probationer and temporary servants entitled to the protection of Article 311 if the order is penal, 526
 Malafide probationer reverted, order quashed, 526
 Non-payment of subsistence allowance is not punishment 526
 Reversion, persons holding officiating post, reversion to original post does not violate Article 311, 527
 Probationers, not entitled to the protection of Article 311 the order is not penal, 527
 Article 311 is proviso to Article 310, 527
 Dismissed, removed, and reduction in rank, meaning of 527
 Effect of Indemnity on Indian Civil Service, 528
 Leave can be revoked, 528
 Government can differ from the finding of facts recorded by enquiry officer, 528
 Rules cannot violate, 528
 Changed circumstance, meaning of, 529
 Disciplinary matter, meaning of, 529
 Privilege Constitution of India, article 163(3), 529
 Advice given by the Council of Minister, is a privileged document 529
 President is competent to determine the age of judges of High Court, 529
 Standard of Proof proof as required in criminal case need not be present in departmental enquiry, 529
 Criminal trial, judgment given, not binding on enquiry officer in departmental proceedings 529
 Charge sheet of facts form single document, 530

- Scope of Article 132 is very wide, 383
- Interpretation of Constitution, meaning of; 384
- Interpretation of Article 14 is well settled, 384
- Scope for difference of opinion does not raise a substantial question of law, 384
- Case be referred to five Judges, 335
- Proceedings for the recovery of tax is a civil proceedings, 385
- Certificate and order granting leave at variance, Effect, 386
- Obiter observations should be avoided under Article 132, 386
- Certificate under Article 132 may be Limited, 386
- Appeal from single Judge does not lie if no constitutional question involved, 386
- Appropriate Proceeding
 - Meaning of, 512
- Any Court
 - Meaning of, 543
- Army Act, 1950
 - Is Constitutional, 320
- Arrest
 - And protective custody, 286
- Assessment order
 - Various orders can be challenged in one petitions, 401
- Article 255
 - See Legislative Competency, 553
- Article 311
 - General, 515
 - Discharge, When Penal, 516
 - Suspension, 516
 - Suspension with retrospective effect, 516
 - Suspension during leave, 516
 - Dismissal and removal, difference, 517
 - Preliminary enquiry, 517
 - Difference in temporary and permanent posts, 517
 - Nature of protection given by Article, 311
 - Reduction in rank, losing places in the same cadre no reduction in rank, 518
 - Penal action—What is, 519
 - Show cause—What is, 519
 - Departmental proceeding are quasi judicial, 519
 - Dismissal—Meaning of 519
 - Reasonable opportunity, explained, 519
 - Probationers, holding of a formal enquiry is not punishment 520
 - Statement made in previous enquiry—cannot be made the basis for punishment, fresh enquiry must be held; 523
 - Chief Justice can delegate the power to hold enquiry to any other judge 521
 - Termination in accordance with service rules does not attract Article 311
 - Power of appointment includes power to dismiss or surpend, 511
 - Ex-cadre appointee has no right over the cadre appointee, 521

- Foreign Court cannot terminate citizenship, 111
- Getting passport from forelgen Government effect, 111
- Central Government to determine the question of termination of citizenship, 111
- Court can determine Citizenship, 112
- Indian citizen cannot be convicted under Foreigners Act, 1946, 112
- Indian citizen cannot be subjected to an adverse order under Foreigners Act, 112
- Cancellation of Registration of citizenship when can be ordered, 112
- Person if a foreigner, material date, 112
- Citizenship of corporation cannot be determined with reference to its members, 112
- Article 9 does not deal acquisition of citizenship after 26-1-1950, 113

Migration between March 1947 and January, 1956, 113

Migration to Pakistan after 1-1-1947, 113

Civil Proceedings

- Includes Revenue matter, 390
- Includes recovery proceedings, 395
- Includes writ proceedings, 390

Class

- One person may constitute a class, 147

Classification

- Reasonable, 142
- Basis of, 143
- Arbitrary, 144
- Territorial 144, 147
- Geographical, 145
- Regional. 146
- Of foreigners, 146
- Backward and more backward is illegal, 170
- On caste, 171

Colourable Legislation

- Colourable legislation, 35
- Doctrine of fraud on power, 36

Compulsory retirement

- If protected, 178

Consent decree

- If can be challenged, 397

Constitutional question

- What is, 128

Consultative Jurisdiction

- Decision is not final, 393

Contempt

- Of Legislature, 386

Contractual Obligation

- Writ cannot be granted, 475

Construction

- Doctrine of liberal construction and social legislation, 41
- Rule of Mechanical construction, 43

- Temporary servant, holding an enquiry and stigma 530
- Censorship is illegal 530
- At any time*
 - Meaning of, 358
- Benificial construction
 - Rule of, 46
- Bias
 - Point to be raised, 491
 - Judge should not be a party 496
- Burden of proof
 - Order under article 166
 - Defective, is on the person who alleges it, 342
 - Of domicile, 108
- By passing of a Statute
 - Leave may not granted, 417
- Carry forward rule
 - What is 178
- Case
 - Meaning of, 402
- Certificate
 - In Writs, 389
 - Limited certificate cannot be granted, 390
 - Limited certificate may be granted under Article 132, 386
 - At variance with order, effect, 380
 - Should be given with care, 404
 - Defective certificate, 407
- Certify
 - Meaning of, 402
- Certiorari
 - See writs
- Changed Circumstances
 - Meaning of, 529
- Charge sheet
 - What is, 530
- Citizen
 - Who is, 183
 - Includes natural person, 109
 - Position of foreign companies, 111
 - Position of companies, 111
 - Indian citizen cannot be convicted under Foriegners Act, 112
 - Who is, Court can determine, 112
 - Corporation is not a citizen, 112
- Citizenship
 - General, 107
 - Acquisition of, 113
 - Domicile, 108
 - Burden of proof of the changed domicile, 108
 - Person includes natural person, 109
 - Migrated, 109
 - Citizen include only natural person, 110
 - Position of Foregin Companies, 110
 - Citizenship and Nationality, 110

Definitions

- Abandoned, 48
- Accusation, 49
- Accrue and arise, 49
- Acquire, 49
- Acquittal, 49
- Affairs of State, 49
- Agricultural operation, 49
- Agricultural process, 50
- Aid, 50
- Allotment, 51
- Amend, 51
- Any, 51
- Any one of the directors, 51
- Any other mode of transfer, 51
- Appointed, 52
- Area, 52
- As it may judge, 52
- Assignment, 53
- Associated, 53
- As soon as may be, 53
- At any time, 53
- Avocation, 50
- Belonging to, 53
- Business, 53
- By or under this Act or as may be presented, 53
- Cargo, 54
- Carries on business, 55
- Carrying on business, 56
- Certify, 56
- Charge, 56
- Charity, 57
- Circumstances and property, 58
- Collusion, 58
- Concerned and deal, 58
- Conclusive evidence, 59
- Conditions, 59
- Copy, 59
- Constituted, 60
- Consumption, 63
- Contract of service, 63
- Could, 64
- Court, 65
- Court immediately below, 65
- Court or tribunal, 65
- Cultivable Land, 66
- Deemed, 66
- Definite information, 67
- Demand, 67
- Demonstration, 67
- Detains, 68
- Direction, 68

Discharge, 68
Dismissal and removal, 68
Dissolution and prorogation, 68
Distinct matter
Election, 69
Employed in any industry, 70
Employment, 70
Escaped assessment, 70
Especially, 70
Eviction, 70
Except where Government otherwise directs, 70
Exempt, 71
Existing law, 71
Expense, 71
Export, 71
Final, 71
Final order, 71
Finding, 72
For the year in question, 72
Forthwith, 72
Full time, 72
Goodwill, 72
Goods and manufactures, 73
In any case, 73
In any reference, 73
Import, 73
Import in and export out, 73
Impose, 73
Incidental dispute, 73
Industrial dispute, 73
Industrial matter, 74
Industry, 74
In lieu of payment, 74
In matters of religion, 74
In other cases before the judgment is pronounced, 74
In respect of, 74
In the course of, 74
In the interest of public, 74
In the way of his business as agent, 75
Judgment, 75
Judicial proceedings, 76
Just and equitable, 76
Jurisdiction, 76
Lands, 76
Law, 76
Lawfully, 76
Law of a State, 77
Lease and lend, 77
Letter of cover, 77
Legislature, 77
Lend and loan, 78
Material witness, 78
Matter, 78
Matters, 78

Memorial and petitions, 78
Migrate, 78
Modification, 79
Modify, 79
Movables, 79
Nationality and citizenship, 79
Not in accordance with, 79
Not later than fourteen days, 80
No appeal shall lie, 80
Normal labour, 80
Obtains, 80
Occupant, 80
Occupier, 81
Office of profit, 81
Office under the State, 81
On whose behalf, 82
Or, 82
Order, 82
Ordinarily, 82
Or otherwise, 82
Other similar allowances, 82
Our Government, 82
Paid, 83
Panth, 83
Parliament may by law provide 83
Part, 83
Person, 83
Personally, 84
Person practising before the court, 84
Permission, 84
Picketing, 84
Possessed, 84
Practice, 84
Practice and procedure, 84
Police officer, 85
Previous operation, 85
Previous years 85
Producer and consumer, 85
Property, 85
Profess, 86
Public purpose, 86
Punishment, 87
Purchasers's advance and deposit, 87
Purport, 87
Reduction, 87
Religion, 88
Removal, 88
Remove, 88
Remuneration, 88
Rendered illegal, 88
Resides, 88
Retrenchment, 89

- Right to practice, 89
- Sale of goods, 89
- Salary, 89
- Satisfied, 89
- Seduction, 90
- Secrete, 90
- Seizure, 90
- Service of notice, 90
- Shall presume, 90
- Shop, 91
- Statement, 91
- Strike, 91
- Subordinate, 92
- Substance, 92
- Subject to, 92
- Substantial question, 92
- Substantial and compelling reasons, 92
- Taking and retaining possession, 92
- Temple, 92
- Terminal tax, 93
- Trade business or commerce, 93
- Tribunal, 93
- Tribute, 93
- Trial, 93
- Tried, 93
- Upto not more than one, 93
- Vest, 93

Delay

- How determined, 475

Delegated Legislation

- General, 534
- Subordinate Legislation, 534
- Conditional Legislation, 534
- Delegated Legislation, 534
- Territorial Competency, 535
- Maximum limit given, law is not invalid, 535
- Tax may be imposed retrospectively, 535
- Expressed intention to be gathered, 535
- Plea of, not barred by Emergency, 546

Delegation

- Of powers by President, 333
- Of powers by State Government, 337
- Chief justice can delegate power to hold enquiry, 521
- Right to make, 482

Demonstration

- cannot be banned, 525

Directive Principle

- Directive Principles, Scope of, Validity of
law, whether can be determined on their
basis, 322
- Fundamental Rights although in conflict with Directive
Principles must be enforced, 323

Educational grant cannot be claimed as of right, purpose of Article 30 (1) cannot be defeated, 323

Fee concession cannot be claimed as of right, 223

Harijan colony can be built, 323

Prohibition laws can be made, 323

Slaughter of milch animals when allowed, 323

Distinction cannot be made between private and public undertaking's workers, 324

Living wage and directive principles, 325

Living wage, meaning of, 326

Wage structure, three categories, 326

Validity of laws cannot be tested with respect to Directive principles, 326

Concept of minimum wage is in harmony with modern trend, 327

Directive principles not to be enforced at the expense of minorities, 327

Discharge

When penal, 515

Disciplinary matters

Meaning of, 529

Discretion

Exercise of discretion not to be interfered with, 442

Industrial Award, when to interfere, 443

Circumvention of ordinary procedure when allowed, 444

Exercise of advisory jurisdiction, Court not to travel beyond it, 447

Power under Article 136 can be exercised only when invoked, 448

Decision of appellate tribunal under income tax can be challenged under article 136, 448

When can be challenged, 155

Of Government, 155

to examine constitutionality, 178

Discriminate

What is, 176

On ground of descent, 176

Dismissal

Meaning of 579

What is, 517

And removal, difference, 517

Discrimination based on religion etc

General, 170

Article 15 (4) is not obligatory, 170

Object of article 15 (4) is to remove backwardness, 170

Object of First Amendment Act 1951, 170

State includes Legislature and Government 170

'Backward' and 'more backward' classification is bad, 170

Classification based on caste only is bad 171

Appointment of Commission, not essential before passing orders under article, 15 (4)

Exemption of Harijans and Muslims from cost of additional police force is bad, 171

- The authority should be within the territory of India, 171
- Who can question the constitutionality, 171
- Discrimination on the basis of place of birth, 171
- Excessive reservation may amount to fraud on the Constitution, 171
- Special provision for children and women, 172
- Caste, 172
- Only, 172
- Race, 172
- Religion, 172
- Electoral law, 172
- Requirement of capitation fee, 172
- Article 15 and 29 (2), 173
- Discrimination, 173
- Discrimination should be by an authority within the territory of India, 123
- Selection of candidates getting less marks is violative of article 15, 173
- Selection after advertisement does not violate article 15, 113
- Discriminate against, meaning of, 113
- Discrimination on the basis of religion only, 173
- Discrimination on the basis of sex, 176
- Dismissed**
 - Meaning of, 527
- Dissolution**
 - power of, 360
- Detrimination**
 - Meaning of, 420
- Domicile**
 - What is, 108
 - Burden of proof, 108
- Double jeopardy**
 - Protection against, 273
 - Act done before the Constitution are covered, 273
 - Laws in force, 273
- Economic Justice**
 - What is, 100
- Educational rights**
 - Scope of Article 26, 304
 - Right of freedom of religion, 304
 - Religion, meaning of, 305
 - State regulation, 305
 - Freedom to manage religious affairs, 306
 - Religious denomination or section thereof, 306
 - Matters of religion, 306
 - Right to administer property in accordance with law, 307
 - Freedom as to payment of taxes for promotion of any particular religion, 307
 - Protection of cultural and educational rights of minorities, 307
 - Articles 15 and 29, 307
 - Discrimination as to admission to educational institutions, 308
 - Minority Community, 308

Appeal to conserve language is not a corrupt practice, 393
 Fixing seats for a community is illegal, 308
 Some cases, 309

Ejusdem Generis

Principle of, 33

Election

Means the whole Election 331
 Election petition only remedy to challenge elections, 547
 Election matter and article 136, 437
 Meaning of, 548

Election Commission

Power under article 192, 370

Emergency

Only one interpretation possible of article 59, 542
 Article 358 and 359 distinction, 542
 Order under Article 359 lasts for a specified period whereas order under 358 last during emergency, 542
 Presidential order during emergency does not enhance the power of President to Legislate, 543
 Article 359, "Any Court", Covers all Courts in India, 543
 Article 359, Scope, Applies to proceedings even under section 491 of the Code of Criminal Procedure, 543
 Substance and not the form of proceeding is the decisive factor, 544
 Law challenged on the ground of violation of fundamental rights, bar of Article 359 is applicable, 544
 Order under Article 359 need not be universal, 545
 Detention in violation of the Act bad, can be challenged, 545
 Malafide, Court can be moved inspite of Article 359, no Bar, 546
 Publishing a book of purely scientific nature cannot be banned, 546

Equality before law

Meaning, 141
 Absolute equality, 141
 Article 14 covers both substantial and procedural law, 141
 Presumption is in favour of constitutionality, 142
 Reasonable classification, 142
 Intelligible differentia and rational relation to the object sought to be achieved, 142
 Basis of classification, 143
 Reasonable classification, defined, 143
 Classification need not be scientifically perfect and logically complete, 143
 Arbitrary classification, 144
 Section 197 Cr. P. C. is valid, 144
 Territorial discrimination, 141
 Classification based on geographical and historical grounds, 145
 Regional difference may justify classification, 145
 Pending proceedings constitute a class in itself, 145
 Exemption in favour of some body does not constitute discrimination, 146
 Different authorities enforcing different Acts which result in

- different treatment, not bad, 146
- Classification based on different localities, 146
- Classification of foreigners, 146
- Possibility of discrimination, 146
- Discrimination should be rational, 147
- Different procedure in different State, no violation, 147
- Territorial classification, 147
- Only one person may constitute as a class, 147
- Classification of manufacturers for giving exemptions etc., 148
- Vexatious litigants may constitute a class, 148
- Laywers practising on original side in Calcutta constitute a class, 148
- Odd cases may be treated differently, 148
- Persons may constitute two classes in the same State and under the same Act, 149
- Different classes of public servants may be treated differently in the same State, 149
- Fixation of maximum rent without making distinction, does not violate Article, 14
- Selection of candidates getting less marks in an interview is illegal 150
- Condition applicable to all cannot be called discriminatory, 150
- Gold smiths who works themselves constitute a class, 150
- Factories of three years standing may constitute a class, 150
- State may tax only few articles, 151
- Government to decide whether a civil servant should be proceeded departmentally or otherwise, 151
- Tea plantations may be treated differently, 151
- Difference in procedure in settling disputes no discrimination. 151
- Section 85 of Factories Act not discriminatory, 152
- Trial by section 20 Magistrate is not discriminatory, 152
- Law authorising appointment of special Magistrates, 152
- Employees doing same work not entitled to get same pay, 152
- Temporary Government servant, 152
- Simple and short procedure for trying certain offences, 153
- Right to cross examine denied, law not bad, 153
- Preventive Detention Amendment Act 1951 whether void 153
- Barred right of appeal cannot be revived, 153
- Succession cannot be determined by an Act, 153
- State can fix minimum of tax, 153
- Requirement of capitation fee is legal, 154
- Lawyer contesting municipal election not to accept brief for or against Municipality, condition is not violative of Article 14, 153
- Absorbed employees of Municipal Board cannot claim the same treatment as given to those already in government service, 154
- Same class of property subjected to different tax rates—Law is void, 154

- Intention of legislature, immaterial, 154
- Exercise of discretion by the State, 154
- Discretion given to Administrative Tribunal by law cannot be challenged, 155
- Discretion of Government, 155
- Discretion to Income Tax officer, 155
- Customs can be declared void, 155
- Madras District Board Amendment Act, 1957 and Kerala Act 4 of 1958, 164
- Section 5 (7a) Income Tax Act is valid, State Monopoly, 166
- Proceedings taken before Constitution, 166
- Proceedings completed before Constitution, action can be taken, 166
- Two kinds of commitment proceedings under section 207 and 207 A Cr. P. C. held valid, 167
- Presumption of guilt based on poison etc., 167
- No waiver of fundamental rights, 167
- Right of trial by jury taken away qua one man only held to be bad, 167
- Working journalists, 167
- Represented through legal practitioner, 168
- Classification of unions, 168
- Slums Areas Act, 1956, 168
- Different laws may prevail in different parts, 168
- Law not applying to the entire State, 168
- The Orissa Motor Vehicles Act 36 of 1947 and the Orissa Amendment Act No. 1 of 1949, 168
- Bombay Rents Control Act 1947 etc., 168
- Companies Act, Section 237, 168
- Punjab Public Premises Act, 168
- Statute saved by article 31 not open to attack, 164
- Discrimination must be established by evidence, 164
- Qualification for membership can be imposed, 164
- Special method for the recovery of State does not bad, 164
- Special procedure for one person only may not be bad, 164
- Subversive activities, 165
- Foreign exchange regulation, 165
- Section 23 (b) Foreign Exchange Regulation is valid, 115
- Not applying certain provision of Criminal Procedure etc., 165
- Bihar Panchayat Raj Act, 165
- Rule 65 under Displaced Persons Act, 165
- Exemption of excise duty etc., 165
- Export control order, 165
- Bihar Hindu Religious Trust Act, 165
- Arms Act, 166
- Rules may fix maximum fee, 162
- Scheme of annuity deposit is legal, 162
- Three tier system is legal, 162
- Interviews may regulate admissions to schools, 162
- Junior civil servant retained and senior removed, does not violate Article 14 if removal is the result of disciplinary proceedings, 162
- Registered dealers may constitute a class, 162
- Temporary deprivation does not violate Article 14, 162

Construction of Article 14, 155

Doctrine of Due process, value of American cases, 156

Retrospective effect of the Article 14, 156

Principle of equality before law whether applies to State, 156

Article 14 applies to all persons whether citizens or not, 156

Foreign company cannot invoke Article 14, if Article 19 is also involved, 156

Aliens, 157

Who can raise objection, 157

Taxation laws, 157

Power of State Government to order trial before Sessions Courts or by jury, 156

Special Courts and special procedure, 158

Facility for women student etc., 159

Requirement of licences, 159

Fixation of minimum fee for different classes not bad, 159

Provision relating to keeping prisoners in isolation, 160

Bad and good provisions not separable, 160

Arbitrary selection of sub-Judges bad, 160

Discrimination should be pleaded and proved, burden of proof, 160

Termination of services without enquiry is discriminatory, 161

Filling of posts after due advertisement, no violation of equal protection of laws, 161

Two provisions in the same act, one more harsh will be struck down, 161

Section 87 (b) of the C. P. C. is not discriminatory, 163

Statute providing quasi-judicial machinery not bad, 163

Carry forward rule is violative of Article 14, 163

Rotational system of promotion is not bad, 163

Reichert value of Ghee may be different in different regions, 164

Equality in services

Equality of opportunity, 175

Discriminate against, 176

Reservation for backward classes, 178

Scope of clause 2 of article 16, 176

Reservation of posts for different communities bad, 176

Tenders not accepted, no violation of Article 16, 176

Different rules for different posts, Article 16 not violated, 176

Discrimination on ground of descent bad, 178

Only Class I officers entitled to promotion, Nothing bad, 176

Retention of junior man not bad, 177

Bar against employment qua certain persons bad, 177

Reservation for scheduled caste not bad, 177

Promotion, dissimilar procedure, no violation of Article 73 when there is proper classification, 177

Judicial service, 177

Socially and educationally backward classes, 177

Education Department, 177

Termination of temporary servant on account of unsatisfactory work, Article 18 does not apply, 178

atis-

- Termination on account of retrenchment of *senior Govern-*
ment servants, 178
- Compulsory Retirement, 178
- Carry forward rule, 178
- Rotational system, 179
- Selection after advertisement not bad, 179
- Candidates getting lesser marks cannot be selected 179
- Three tier system
- Equality of opportunity**
 - What is 176
- Error apparent**
 - What is, 477
 - Manifest error, 477
- Error of Law**
 - What is, 441
- Estates**
 - What is, 317
 - Rights in, 317
- Evidence**
 - Cannot be gone into in writs, 475
- Exceptional circumstances,**
 - What are, 397
- Executive Fiat**
 - D spossession cannot be ordered, 371
- Executive Function**
 - Defined, 332
 - Can only be delegated, 333
- Executive instruction**
 - writ if lies, 478
- Executive Power**
 - Defined, 329
 - Can only be delegated by President, 33
- Executive power of States**
 - See Union executive
- Exemptions**
 - Value of, 36
 - To be strictly construed, 36
- Failure of justice**
 - Explained under article 136, 417
- Federal Characteristics,**
 - What are, 102
- Final order,**
 - Remand order is not, 93
 - Advisory opinion is not, 393
 - To be challenged in writs, 471
- Finding of fact**
 - Cannot be challenged in Supreme Court, 388
 - Concurrent finding of fact, no interference, 388, 317
 - No interference when discretion judiciously exercised, 368
 - Decree with consent, 397
 - Nature of deed of Partnership, 397
 - Nature of Tenancy, 397
 - Not interfered in appeals, 335

- Question of negligence, when not allowed to be challenged, 396
 Question whether fairly dicty or public dicty, 396
 Question regarding adoption, 396
 Question as to good faith, 396
 Transaction collusive nature of, 396
 Question regarding parentage, 396
 Relationship of master and servant, 396
 Question as to sufficiency of evidence, 396
 Conclusions based on assumptions, 398
 Entries in *wajab-ul-urz* can be looked into, 397
 Exceptional Circumstances, 397
 Misreading of evidence, 398
 When there is no concurrent finding, 398
 All evidence not considered finding of fact may be interfered with, 432
 Additional evidence cannot be led, 433
 Evidence is not to be considered under Article 136, 433
 Evidence not to be reviewed except in exceptional circumstances, 433
 Question likely to arise in other cases allowed to be raised, 433
 New point if can be disposed on the basis of evidence on record may be raised, 434
 Interference when to be made under Article 136 when finding of fact is involved, 427
 Finding of fact if can be challenged, 427
 Exceptional circumstances, 427
 Inadequacy of evidence to reach a finding is not a question of law, 431
 Interference in second appeals when to be made, 431
 Finding of fact recorded under section 63 of the Income Tax Act, 431
 Finding as to material effect on election cannot be challenged, 432
 Mixed question of law and fact, 432
 Certificate not to be granted merely on a question of fact, 407
 Exceptional circumstances, what are, 407
 Plea of *alibi* not properly considered certificate may be granted, 401
 Concurrent finding of fact, 408
 Finding as to conspiracy, 408
 Evidence not to be re-assessed, 408
 Finding of fact even, if not concurrent if can be upset, 408, 409
 Reasons for coming to a finding of fact not to be gone into, 409
 Supreme Court not to interfere with the sentence, passed unless there are exceptional circumstances, 411
 Sentence of fine Appeals do not abate, but other appeals abate, 411
 Criminal case against a Government servant, merely because

Legal representatives may get salary does not give them a right to continue the appeal after the death of, accused, 412

War diaries are admissible in evidence, 413

State can appeal against the order of acquittal, 413

Detention order revoked during the pendency of appeal, new order passed, detention can still be examined when legal questions are involved, 414

Inference not based on evidence court may interfere, 409

Grievance that some witnesses were not examined not made before the High Court-Ground can not be urged in High Court, 409

Additional grounds when can allowed to be urged, 419

Evidence may be reassessed in appeal where defence version appears to be correct, 410

Argument that points were raised but not considered by High Court allegations of this type not to be encouraged, 410

Firman

Is a law, 123, 125

Foreigner's Act

Indian citizen cannot be subjected to, 112

Foreign Court

Cannot terminate citizenship, 111

Fraternity

What is, 99

Freedom of Assembly

Anticipatory restrictions can be imposed, 193

Government servants and article 19 (1) (b), 194

Essential Services Maintenance Ordinance, 1960 does not violate article (1) (b), 196

Processionist using defamatory language against a Minister, 194

General, 191

Assembly must be peaceful, 191

Right to public meeting, 192

Demonstration, what is, 192

Demonstration cannot be banned, 193

Section 144 Cr. P. C. does not violate article 19 (1)(b), 193

Freedom of Association

General, 195

Right to trade unionism, 196

Law may ban association in the good of society, 197

Banks may not disclose secret reserves, 198

Right to form association can be regulated, 198

Restriction upon the freedom of association, 198

Law should lay down principles for the guidance of Executive, 198

Regulation of supply and purchase, 198

Classification of unions can be made, 199

Right to strike, 198

Right to collective bargaining, 196

Secret association, 197

Employee cannot be dismissed for joining an Association, 197
 Society cannot be declared illegal by merely issuing a notification, 197

Freedom of Movement

Watch on movements, 202
 Externment and internment orders, 202
 Restrictions and procedural law, 203
 Restrictions of entry into India, 203
 Grounds of restrictions, 203
 Suppression of Immoral Traffic in Women and Girls Act 1956
 does not violate Article 19 (1) (d), 204

Freedom of Press

Pre-censorship cannot be imposed, 185
 Freedom of press includes freedom to employ staff, 185
 Obscene, meaning of, 185
 Obscene literature if proscribed does not violate article 19 (1) (a), 184
 Freedom of speech includes freedom of press, 184
 Freedom of speech includes circulation, 184
 Freedom of press is not higher than the one which ordinary citizens enjoys, 184
 Excessive and prohibitive burdens cannot be placed on the press, 184
 Advertisement, when can be controlled, 185
 Statute cannot regulate number of pages according to price, 185

Freedom of Profession

See freedom of trade

Freedom of property

Quasi permanent allotment is not property, 211
 Foreigners are not protected by article 19, 211
 Citizens include only natural person, position of Foreign companies, 211
 General, 208
 To acquire, hold and dispose of—meaning of 208,
 Property, meaning of, 209
 Article 19 (1) (f) and 31 (2), 209
 Article 19 (1) (f) deals with both abstract and concrete rights, 209
 Reduction of rent does not violate article 19 (1) (f), 212
 Electricity Supplying Undertaking can be taken over by State, 212
 Acquisition under the Land Acquisition Act is not violative of freedom of property, 213
 A licence which does not pass any property, if taken away, does not violate article 19 (1) (f), 213
 Property owned by various persons, it can be sold and sale proceeds divided if it is not capable of partition, 213
 Offerings made to Durgah, no one can complain of any infringement, 214
 Right of share holder to borrow money from the company is not a fundamental Right, 217

- Pre-emption based in vicinage is ultravires of Article 19 (1) (f), 217
- Implementation of scheme delayed by litigation, Enforcement of Constitution—Validity cannot be examined, 217
- Right of a Mahant in the property of the Math 214
- Assessee cannot claim refund of Sales Tax, 215
- Section 237 of the Companies does not violate Article 19 (1) (f), 215
- A Grant which is not absolute does not confer any right, 215
- Fixation of maximum rent does not violate Article 19 (1) (f), 216
- Temporary deprivation is not hit 216
- Increase of licence fee from Rs. 400/- to Rs. 6,000 held legal, 216
- Right to strike, 196
- Right to collective bargaining, 196
- Secret association, 197
- Employee cannot be dismissed for joining an Association, 197
- Society cannot be declared illegal by merely issuing a notification, 197
- Law may ban association in the good of society, 197
- Banks may not disclose secret reserves, 198
- Right to form association can be regulated, 198
- Restriction upon the freedom of association, 198
- Law should lay down principles for the guidance of Executive, 198
- Regulation of supply and purchase, 198
- Classification of unions can be made, 199
- Freedom of Residence**
 - Scope of Article 19 (1) (e), 205
 - Grounds of Restrictions 205
- Freedom of Speech**
 - Infringement of rights by private individuals 183
 - Construction of laws restricting fundamental rights, 183
 - Article 19 available to free citizens, 183
 - Who is a citizen 183
 - Suppression of Immoral Traffic in Women and Girls Act 1956 does not violate Article 19 (1) (d), 204
 - Scope of article 19, 181
 - Article 19 not exhaustive, 181
 - Rights under article not absolute, 182
 - Article 19 and Article 21 182
 - Article 19 and Article 31, 182
 - Rights which are not fundamental, 182
 - Sedition, 187
 - Sections 124 (2) and 505 IPC are constitutional, 183
 - U P Special Power's Act 1932, section 3 is unconstitutional, 188
 - Punishing an employee for making a speech may violate Article 19 (1) (a), 188
 - Freedom of speech is not violated when a Member of Parliament is detained under DLR 188
 - Right to make peaceful and orderly demonstration, 189

- Strikes even if associated with speeches not protected, 189
- Incitement which may lead to indiscipline not covered, 189
- Section 123(5) of Representation of the Peoples Act, 1951 is valid, 189
- Government should state reasons for confiscating seditious publication, 189
- Getting a book of scientific nature published while under detention, 189
- Religion cannot be insulted, 190
- Employee can be asked not to disclose information, 190
- Legislators enjoy absolute and unfettered powers inside the House, 186
- Freedom of speech under article 19 (1) (a) and article 194, 186
- Using defamatory slogans against Minister does not undermine security of State, 167
- Section 144 Cr. P. C. does not violate article 19 (1) (a), 187
- Freedom of Trade**
 - Freedom of profession, what is, 225
 - Profession, Meaning of, 226
 - Occupation, 226
 - Trade, 226
 - Only Citizen can enjoy the right, 226
 - Tax legally imposed cannot be violative of Article 19(1)(g), 226
 - Refusal to recognise a stock exchange does not violate Article 19 (1) (g), 227
 - Licence for running a Hotel, 227
 - Slaughter of cows, if can be banned totally, 227
 - Advertisement can be banned, 229
 - State can compete, 229
 - Act regulating Market areas does not infringe Article Article 19(1)(g), 229
 - Provisions providing for subsidy not bad, 229
 - Introduction of Small Taxis, 230
 - Acceptance and Rejection of tenders does not violate (1)(g), 230
 - Creating of monopoly rights illegal, 230
 - There is no Right to carry on business at a particular place, 230
 - Producers can be asked to sell their products to specified agencies, 231
 - Provisions for improving the health of workers, 231
 - Income Tax Act, section 16, not ultravires, 231
 - Acquiring land for prospecting or fixing maximum prices not bad, 232
 - Provision requiring exhibiting of minimum length of film but not fixing maximum, bad, 232
 - Stocks can be frozen, 232
 - Minimum wages can be fixed, 232
 - Right to hold cattle fair, 234
- Fundamental rights**
 - Government servant enjoys all Fundamental rights, 525
 - Judgment cannot violate, 183

- Rules should not violate, 522
- Are paramount, 553
- Are sacrosanct, 553
- Enjoy transcendental position, 552
- Judgment cannot violate, 183
- To prevail over directive principle, 323
- Fundamental rights and armed forces
 - General, 319
 - Army Act, 1950 does not violate Article 14, 320
 - Central Government confirming the order passed by Court
 - Martial, nothing illegal, 320
 - Government servant not included, 321
- General and special provisions
 - General and special provisions, 33
 - Ejusdem generis, 33
 - Special provision to prevail over general provision, 34
- Grounds of Appeal
 - All points should be taken, 387
- Habeas Corpus
 - See writs,
- Hardship
 - Cannot alter the meaning, 12
- Harmonious Construction
 - Principles of, 13
 - What is, 20
- Illustrations
 - Value of, 45
- Indian Territory
 - Amendment in Article 1 and its effect, 101
 - Union of States, 102
 - Federal Characteristics, 102
 - Power to amend *Constitution* includes power, to cede national territory, 105
 - Article 1 (3)(c) does not confer power to acquire foreign territories 105
 - Scope of Articles 2 and 3, 106
 - Requirements of Article 3, 106
 - Scope, applicability and effect of Articles 3 and 4, 106
 - State includes Union Territory, 186
 - "Territory", 102
 - "Acquired Territory",
 - Territory if part of India or not, how to be determined, 103
 - Succession of States, 103
 - Assimilation of acquired territories, 103
 - Creation etc. of new States, 103
 - Rights of persons of occupied territory, 104
 - Cession of national territory should be by legislative action, 104
 - Territory of India, 104
 - Territories as may be acquired, 105
 - Opinion of executive binding on Courts, 105
 - Power to cede territory is not subject to Preamble, 105

Interlocutory order

Interlocutory orders may be challenged, 435

Case not made out in the statement of case, 435

Interim order

Writs against, 468

Interpretation

All words to be given meaning, 10

Spirit of Constitution is irrelevant, 11

Intention of Legislature, 11

Hardship cannot alter the meaning, 12

Legislature not amending the interpretation given by courts,
legitimate inference is that the interpretation is in accordance with the intention of the legislature, 12

Notification to have force of law, 12

Court is not to lay down standard for legislature, 12

Defect in phraseology, courts cannot remedy the defect, 12

Reference to existing law, 13

Legislative intent how determined, 13

Grammatical and ordinary sense can be modified, 13

Constitution to be liberally interpreted but not at the risk of
language used, 13

Duty of the court, 14

Preamble not to be used when words clear, 27

Court cannot usurp the function of legislature, 17

Same expression used in different sections may be interpreted differently, 17

Words to be given sensible meaning, 17

Redundancy to be avoided, 17

Precise words to given their natural meaning, 17

Words cannot be added, 18

Language to be given full effect, 18

Principles of harmonious construction, 18

Intention how to be determined, 19

Gaps cannot be filled, 19

Grammatical construction, 19

Express words to be construed strictly, 20

Background of a statute, 20

Harmonious construction, 20

Interpretation defeating the object to be avoided, 21

Same meaning to be given to the same word, 14

Constitution not to be construed in narrow and pedantic
sense, 14Statute once declared void has not again to be shown void in
every case, 14

Four principles to be considered, 15

Ambiguity cannot be created artificially, 15

Later Act when to be used to interpret an earlier, 15

Construction leading to absurdity and hardship to be avoided,
16

Statute creating offence, mens rea is essential ingredient, 16

Interpretation defeating the object, 16

Interpretation of Rules

General, 47

Rule made under a statute need not be in conformity with the General law, 48

Rules cannot save the Act, 48

Inter vener

Has no right to reply, 57

Interview

Can regulate admission, 162

Issues

Not framed, point cannot be urged, 400

Jeopardy

Offence, 273

Prosecuted and punished, 273

Same offence, 273

More than once 274

Ex-post facto laws, 274

Double Jeopardy, 274

By authority of law, 275

Fixing Minimum sentence of fine, 275

Trial failing for want of sanction, second trial not barred 276

Punishment under Sea Customs Act, proceedings under

Foreign Exchange Regulation can be taken, 276

Unauthorised use of canal is not an offence, 276

Forfeiture is not a penalty, 276

Trial under an ex-post facto law, 276

Offence under Prevention of Corruption Act, property acquired before the Constitution can be taken into consideration, 276

Punishment by jail authorities does not bar trial under Indian Penal Code, 276

Distinct offences, 277

Confiscation of goods, effect, 277

Immunity under clause 3 of Article 20 when available, 278

Protection when available, 278

Compelling to be a witness, 279

Accused if can be a witness on his own behalf, 279

Production of documents, 279

Corporation, if person, 279

Retracted Confession, 279

Section 27, Evidence Act if constitutional, 230

Protection against, 273

Act done before the Constitution are covered 273

Laws in force, 273

Journalist

Constitute a class, 167

Judgment

What is, 382

Judicial Bodies

See Administrative Bodies

Quasi judicial bodies

Judicial Commissioner

When can give certificate, 406

Judiciary

If comes under State, 118

- Jury**
 Appeal against verdict of, 455
 Trial by,
- Law**
 Includes firman, 122
 Includes notification, 124
 Includes constitutional amendments, 124, 555
- Laws and laws in force**
 Meaning of, 136
- Laws infringing fundamental rights**
 American decisions, when to be followed, 122
 No power to issue writ against quasi judicial bodies in Pondicherry before merger, 122
 Only judiciary can declare the law to be void, 122
 Law includes Rules and Regulation but not constitutional Amendments, 123
 Validity of law cannot be determined unless properly raised, 127
 Test for determining validity of law, 127
 Discretion of the court to examine the Constitutionality of the statute, 127
 Person directly affected can challenge the law, 128
 The question must be substantial, 128
 What is Constitutional question, 128
 Law void abinitio cannot be revived, 125
 Statute void for unconstitutionality is dead and cannot be revived, 125
 Right guaranteed by a firman cannot be revived on the coming into force of the Constitution, 125
 Pre-constitution laws, 126
 Law cannot be declared void retrospectively, 121
 Question of constitutionality of law can be raised only by affected persons, 121
 Against whom fundamental right can be enforced, 121
 Rights not expressed or declared as fundamental rights cannot be enforced, spirit of constitution is irrelevant, 121
 Directive principles of State policy cannot defeat fundamental rights, 121
 Directive principles cannot abridge power to legislate, 126
 Subjective opinion, 126
 Repeal and expiry of temporary acts, 126
 Retrospective effect, 127
 Bye law, 123
 Firman of Ruler is law, 123
 Notification, 123
 Administrative order cannot have the force of law, 123
 Law if include Constitutional amendments, 124
 Only bad portions of law are to be struck down, 124
 Courts not to look behind the appearance etc. of the law, 124
 Presumption is that the act is valid, 124
 Article 13 is not retrospective and will not apply to pending proceedings, 124
 The doctrine of gradual and stealthy encroachment, 135

- Motive of the legislature cannot invalidate law, 135
- Construction upholding validity of law should be adopted, 135
- Equality before law, 135
- The state shall not make any law, 136
- Retrospective effect of clause 1 of Article 13, 136
- All the laws in force, 136
- Respect for long standing legislative practice, 132
- The injury must be to the plaintiff individually, 131
- Waiver and estoppel, 132
- The pleading must be adequate, 132
- The challenge must be specific, 133
- Doctrine of stare decisis, 133
- Doctrine of severability or separability, 133
- Meaning of the expression 'law' and laws in force, 136
- Who can decide the law to be void, 136
- Government and State, 136
- Effect of court declaring act to be void, 136
- Clause (1) and (2) of article 13 enacted by way of abundant caution, 126
- Citizen possessing fundamental rights alone can claim relief, 126
- Fundamental right cannot be waived, 119
- Law repugnant to fundamental rights is void, 120
- Spirit of the Constitution, irrelevant, 129
- Infringement of Fundamental Right law is void, exception is Article 31, 120
- Void Law applied to persons not having fundamental rights, 120
- Void Law can be made good, 120
- Constitutionality not to be determined if case can be disposed of otherwise, 129
- The Court will decide only those matters which are necessary for the disposal of the case, 129
- The petitioner must have a locus standi, 130
- The question must be raised at a proper stage, 131
- The question must be justiciable, 131
- General, 117
- Fundamental Rights under the English Constitution, 117
- Fundamental Rights are a guarantee against State action, 118
- State if include Judiciary, 118
- State includes Legislature, 118
- State includes Income tax Department, 118
- Authority with in the territory of India, 118
- Pondicherry was not territory of India, 119
- Exercise of power to be in consonance with the Constitution, 119
- The fundamental rights are beyond legislative competence, 119

Legislative Entries

- Interpretation of entries, 41
- Entries to be liberally construed, 41

Jury

Appeal against verdict of, 455

Trial by,

Law

Includes firman, 122

Includes notification, 124

Includes constitutional amendments, 124, 555

Laws and laws in force

Meaning of, 136

Laws infringing fundamental rights

American decisions, when to be followed, 122

No power to issue writ against quasi judicial bodies in Pondicherry before merger, 122

Only judiciary can declare the law to be void, 122

Law includes Rules and Regulation but not constitutional Amendments, 123

Validity of law cannot be determined unless properly raised, 127

Test for determining validity of law, 127

Discretion of the court to examine the *Constitutionality of the statute*, 127

Person directly affected can challenge the law, 128

The question must be substantial, 128

What is Constitutional question, 128

Law void ab initio cannot be revived, 125

Statute void for unconstitutionality is dead and cannot be revived, 125

Right guaranteed by a firman cannot be revived on the coming into force of the Constitution, 125

Pre-constitution laws, 126

Law cannot be declared void retrospectively, 121

Question of constitutionality of law can be raised only by affected persons, 121

Against whom fundamental right can be enforced, 121

Rights not expressed or declared as fundamental rights cannot be enforced, spirit of constitution is irrelevant, 121

Directive principles of State policy cannot defeat fundamental rights, 121

Directive principles cannot abridge power to legislate, 126

Subjective opinion, 126

Repeal and expiry of temporary acts, 126

Retrospective effect, 127

Bye law, 123

Firman of Ruler is law, 123

Notification, 123

Administrative order cannot have the force of law, 123

Law if include Constitutional amendments, 124

Only bad portions of law are to be struck down, 124

Courts not to look behind the appearance etc. of the law, 124

Presumption is that the act is valid, 124

Article 13 is not retrospective and will not apply to pending proceedings, 124

The doctrine of gradual and stealthy encroachment, 135

Licences

See Reasonable Restriction,
Requirement of, 159
For running a Hotel, 227
licence fee can be raised, 216

Limitation

Construction of provisions dealing with, 47
In writs, 475, 476
Period prescribed under Limitation act can be taken as a
guide, 475,
Laches 476

Limited certificate

If can be granted, 390, 336

Living wage

Meaning of, 326
And Directive principles, 326

Lis

When commences, 392

Locus standi

Of citizen, 126, 130

Malafide

(see *Natural justice*)

In privileged proceedings, 356
Malafide vitiates every proceedings, 491
Source of information should be given, 492
Alegations of malafide made, affidavit to rebut should be
filed, 492
Bias, what it signifies, 492

Mandamus

See writs

Mandatory and Directory Provisions

Mandatory and directory provisions, 29
Court should determine the nature, 30
"Shall" when mandatory, 30
Use of word "may" effect of, 30
"May" may mean shall, 30
Absence of word shall not conclusive in deciding the
question, 31

Manifest injustice

What is, 477
Should be shown, 477

Marginal notes, Title and Preamble

Marginal notes and heading of chapters, 25
Title of statute, 25
Long title if helpful, 25
Headings of sections, 25
Preamble, 25
Preamble not to be used when words clear, 26
Preamble or title cannot make words redundant, 26

Maxims

Actio personalis moritur cum persona, 94
Actus curiare meminem gravabit, 96
Commodum ex injuria sua memo habere debet, 95

Leave

Can be revoked, 528

Legal fiction

See Presumption

Legislative intent

How ascertained, 13, 19

When relevant, 11

Legislative Power

Power of Parliament to legislate with respect to Union List and Concurrent List, 532

Meaning of repugnancy, 533

Union and State list some Instances, 533

Failure to comply with Article 255, defect cannot be removed by legislature, 533

Failure to comply Article 255, effect, 533

Power to validate unconstitutional subordinate legislation,

Temporary Statute, effect of, expiry of, 534

Repealing Statute, 534

Legislative Proceedings

Reports of drafting committee may be referred, 21

Speech made in the course of debate not helpful, 21

Statements and objects in a bill may be looked at to see the circumstances under which an act was passed, 21

Preamble, 22

Speeches not extrinsic aids, 22

Statement of objects and reasons, 22

Acceptance or rejection of amendments to a bill in the course of parliamentary proceedings does not form part of the pre-enactment history, 23

Prior history may be looked at, 23

Report of select committee, 23

Motive of Parliament, 23

Statement of minister in Parliament, 24

Wisdom of legislature, 24

Reference to legislative proceedings if valid, 24

Legislature

See Union Legislature.

Liabilities

Letters of guarantee etc. given to the rulers, no bar to abolish the Jagir, 537

Liabilities etc. after the formation of the Dominion of Pakistan, Indian Independence (Rights, Properties and Liabilities) Order of 1947, 537

State is liable for the tortious acts of its servant, 539

Contracts by the Government, 539

Property going to State by escheat, 540

Trading and commerce etc. within Indian territory, 541

Liberal construction

Rule of, 41

Liberty

See Personal Liberty.

What is, 100

Opportunity to show cause, 495

Rules of Natural justice vary from case to case, 495

Case of the prosecution should be stated, evidence not brought to the notice of other party should not be acted upon, 495

Fair opportunity, what is, 495

Disciplinary action, natural justice to be observed 496

Refusal to record evidence does not violate natural justice, 496

Natural Person

If citizen, 109

Necessary and Proper Parties

Party in whose favour order is passed is necessary party, 487

Parties not added under Article 226 cannot be added in proceedings under article, 136, 487

New Point

New point cannot be allowed to be raised, 387

Point involving leading of evidence cannot be raised, 387

Point not taken in grounds of appeal 387

Substantial point not raised in High Court cannot be argued in Supreme Court, 387

Specific averment not made in writ petitions before High Court, Supreme Court cannot interfere, 387

New point may be urged with the leave of Court 388

Procedure established by statute sought to be by passed new ground cannot be allowed to be urged, 388

Point not taken in courts below, 398

New point which may require amendment of Pleading 398

When there is no decision of the Courts below 399

When not taken in writ petition in High Court, 399

Point not arising out of the order under appeal, 400

When pleading is sought to be changed, 400

Point not taken in statement of case, 400

Grounds disallowed by High Court, 400

When issue not framed, 400

New point likely to arise in other cases allowed to be urged, 400

Point not taken in plaint but argued, 401

Stay cannot be granted which is to remain operative after the judgment, 401

Notifications

Have the force of law, 12

Obiter

Obiter observation should be avoided, 386

Objects and Reasons

Validity of, 22

Obligations

See Liability

Obscene

Meaning of, 185

Ban can be imposed, 186

Occupation

See Freedom of Profession

Office of Profit

Contemporanea expositio est optima et fortis summa in
 lege, 95
 Falsus in uno falsus in omnibus, 94
 Generalia specialibus non derogant, 95
 In pari delicto 95
 Nemo debet esse iudex causa propria sua, 94
 Silus populi est supreme lcs, 96
 Utres magis valeat quam pereat, 96
 Ubi remedium ibi jus, 95

May

When mean shall, 30
 Use of, effect of, 30

Mechanical construction

Rule of, 43

Mensrea

When essential, 16

Merger

Effect on servants, 522

Migrated

Meaning of, 109

Migration

To Pakistan, effect, 113
 To Pakistan after 1-1-1947, 113
 Between March, 1947 and January, 1950, 113

Minimum wages

See Directive principles

Minor changes

If amount to variation, 392
 If amount to affirmance, 392

Mislead

Attempt to mislead, effect, 419

Money

Cannot be acquired, 312

Money bill

What is, 395

Monopoly

By State, 166

Motive

Of Parliament, 23

Nationality

Nationality and citizenship, 110
 Determination of, 111

Natural Justice

See Mala fide

Far opportunity to be heard, 492
 Right to cross examine is not part of natural justice, 493
 Broad requirement of natural justice, 493
 Person choosing not to attend the court cannot complain, 494
 Personal bias violates natural justice, 494
 Impartial treatment to be given, 494
 Judicial or quasi-judicial bodies should not violate principles
 of natural justice, 494

Arts 20 to 22 guarantee, entire protection of personal liberty regarding substantive and procedural law 289

Protection provided by Article 20 to 22 is that life and and personal liberty cannot be affected except under valid law, 289

Seven heads of fundamental rights, 289

Articles 20 to 22 put restrictions on state control in case of deprivation of life and liberty, 291

Reasonableness of law can be determined by Courts under Article 19, but not of law relating to deprivation of life and liberty, 292

Articles relating to right to freedom must be considered together, 292

Article 19, does not protect detention under some law, 292

Article 19, how to be read, Legislation must be directly in respect of the fundamental rights, 293

Some instances, 293

Path and Substance

Rule of, 43

Place of Birth

See Discrimination

Pleadings

(See also *New Points*)

Cannot be altered 400

Discrimination should be pleaded, 169

Petitioner to be kept within, 507

Must be specific, 130

Pleasure of President

Meaning of, 522

Political Justice

What is, 100

Prorogation

English practice, 360

Indian practice 362

Effect on pending bills 363

Preamble

General, 97

We the People of India, 97

Sovereign, 98

Democratic, 98

Republic, 99

Fraternity, 99

Justice, 99

Social Justice, 99

Economic Justice, 100

Political Justice, 100

Liberty, 100

If helpful in the interpretation, 25

Power to cede is not subject to, 105

Relevancy of, 25

Not to be used when words clear, 20

Words not to be made redundant, 20

How established, 388

Order

Meaning of, 420

Original Jurisdiction, Article 131

See Supreme Court

General, 381

Power of Supreme Court to go into the competency of acts of accessions, 382

Other proceedings

What are, 383

Pardon, power of

Ex Maharajas cannot exercise, 347

Pending appeal, 346

Of Executive, 345

Of Supreme Court, 345

Pari Materia

Provisions not in *pari materia*, 39

Parliament

See Union legislature *Speeches made in*, 23

Motive of, 24

Wisdom of, 24

Reference to proceedings of, 24

Member of, may be detained, 188

Parliamentary Privileges

See Union Legislature.

Passport

Getting passport from foreign country, effect, 14

Penal

Discharge, if penal, 516

Penal Action

What is, 517

Penal Statutes

See Taxing statutes

Penal statutes to be interpreted liberally, 33

Penal statutes, actual meaning to be given effect to, 33

Penal statutes in general, 33

Personal Liberty

Meaning of personal liberty, Article 19

There is no deprivation of personal liberty if a man is under detention under some law, 283

Right to live, 284

Deprivation of personal liberty, 283

Articles 21 and 22, 283

Procedure established by law, 284

Executive Instructions are not covered by the definition of law, 286

Article 22, Arrest distinguished from protective custody, 27

Right to be defended by a pleader, 287

Magistrate means magistrate acting as court, 287

Detention by private individual is not covered, 287

Right to appear in examination is not covered, 287

Production within 24 hours is mandatory, 287

Imprisonment or detention under some law is not a restriction under Article 19, 183

- Proper Parties
 - (*See Necessary Parties*)
- Property
 - What is, 310
 - Meaning of, 709
 - See Liabilities*
 - See Obligations*
- Prospective
 - Article 133 is, 389
 - Section may be prospective, 47
- Prospective over ruling
 - What is, 555
 - Only Highest Court can do, 555
 - Infringement of rights by, 183
- Proviso
 - Proviso is sub servient to main provision, 36
 - Proviso may be substantive, 37
 - Proviso may be an addendum, 37
 - Proviso may be locked at when the main provision is ambiguous, 37
- Public Health
 - See Reasonable Restriction*
- Public Interest
 - See Reasonable Restriction*
- Public Order
 - See Reasonable Restriction*
- Public Service Commission
 - Judicial Services, 530
 - Stage at which the Public Service Commission is to be consulted, 530
 - Memorials or petition, 531
 - Provisions of article 320 (3) are not mandatory, 531
 - Regulations made under proviso to Article 320, position of, 531
 - Article 320 does not control Article 311, 531
 - Breach of statutory Rules, Relief can be sought, 530
 - Services of the State include High Court Staff, 530
- Punishment
 - And restrictions, 249
- Punctuation
 - Value of, 38
- Qualification
 - Can be imposed, 164
- Quasi judicial Bodies
 - What are, 479
 - How they function, 484
 - Should give reasons, 487
 - Administrative bodies and, 487
 - Order confirming sale, 474
 - See administrative bodies*
 - Provisions not bad, 163
- Question of fact
 - See finding of fact*

Pre-emption

Based on vicinage is void, 217,262

Preliminary Enquiry

What is, 517

President of India(See *Union Executive*)

Election of, can be challenged in accordance with statute, 331

Delegation of powers by, 333

Presumption

Repugnancy or conflict between two parts, presumption is that no repugnancy was intended, 40

Presumption is in favour of validity, 40

Interpretation should be in favour of Constitution, 40

Deeming provision, 40

Legal fiction, 40

Preventive Detention

Public order, 296

Preventive Detention law in conflict with Article 22 is void, 297

Article 22 lays down safeguards, 298

Reasonable restrictions, Article 19, 299

Section 14 of the Preventive Detention Act, 1950
ultravires, 305

Preventive Detention defined and distinguished, from punitive and arbitrary detention, 300

Communication of grounds, 301

Facts need not be communicated in public interest, 301

One ground vague, effect of, 301

Object of clause of Article, 22

Due process of law, 302

Period of Detention not to be communicated by the Board, 303

Prisoners

Can be kept in isolation, 166

Private Action

If can be challenged, 312

Private Parties

Infringement of fundamental rights, 503

Privileges(See *Union Legislature*)**Privy Council**

Value of decisions of, 136

Probationer

Covered by Article 311, 526

Prohibition(See *Directive Principles*)

See writs

Professional Misconduct

Cases of, 438

Promotion

Following dissimilar procedure, 177

- Removal from India, 261
- Grounds, if to be communicated, 261
- What is a restriction on the freedom of property, 262
- In the interest of, 262
- In the interests of Scheduled tribes, 262
- Prohibition, 262
- Pre-emption, 217, 262
- National Economy, 263
- Rent control, 263
- Agrarian reforms, 260
- Debt recovery laws, 263
- Evacuee property, 264
- Essential commodities, 264
- Right under a contract, 264
- Requisition, 264
- Fixing prices 264
- Temporary deprivation, 264
- Religious property, 265
- Taxing laws 266
- Interest of the general public, some instances, 266
- Competition, 267
- Regulation of essential commodities, 267
- Social welfare legislation, 267
- Intoxicants 267
- Labour laws, 268
- Import Export Regulation, 268
- Monopoly, 268
- Permits, 268
- Licences 269
- Taxation, 270
- State Trading, 86
- Nationalisation, 271
- Clause 6, if Retrospective, 271
- Reasons
 - Need not be given for dismissing appeals, 419
 - Certificate should give, 404
- Recovery
 - By special method of State dues, 164
- Reduction in Rank
 - Losing some places, does not amount to, 518
- Redundancy
 - Should be avoided, 17
- Registered dealers
 - Constitute a Class, 162
- Registration
 - When can be cancelled, 112
- Religious rights
 - Scope of Article 26, 304
 - Right of freedom of religion, 304
 - Right of freedom of religion, 304
 - Religion, meaning of, 305
 - State regulation, 305
 - Freedom to manage religious affairs, 306

Question of Law

- Inference from proved facts is not a question of law, 394
- Construction of a document is a question of law, 394
- Appeal from judgments in second appeals, interference when can be made, 395
- Supreme Court not to interfere with the exercise of discretion, 395
- Litigant has no right to be heard by specific number of Judges in appeals in High Court, 395

Quo warranto

See writs

Race

Discrimination on ground of, 172,

Reasonable Restriction

- What is, 240, 250, 258, 259, 261, 265
- Who can impose restrictions, 242
- Principles governing reasonableness, 242
- Substantive reasonableness, 243
- Procedural Reasonableness, 243
- Restriction must have a relation to the object, 244
- Restriction must not be excessive, 244
- Restriction and prohibition, 244
- Total prohibition, 245
- Retrospective effect and reasonableness, 245
- Natural justice and reasonableness, 246
- Subjective satisfaction of Executive and Reasonableness, 248
- Unfettered discretion, 247
- Possibility of misuse, 248
- Emergency and Reasonableness, 248
- Burden of Proof and Reasonableness, 248
- Restriction and punishment, 249
- Remoteness of restriction, 249
- Excessiveness, 249
- Restriction should be direct, 249
- In the Interest of, 250, 259
- Sovereignty and integrity of India, 251
- Security of State, 251
- Friendly relations with foreign State, 252
- Public order, 252
- Decency or morality, 256
- Contempt of Court, 256
- Defamation, 257
- Incitement to an offence, 258
- Sedition, 258
- Revolution and war, 258
- Interest of the general public, 259
- Public Health, 259
- Public Security, 259
- Public Safety, 259
- Public order, 260
- Public morals, 260
- Protection of the interests of the Scheduled Tribes, 260
- Extermination, 260
- Duration of extermination, 261

Restrictions*See Reasonable restriction***Retrenchment**

Termination of services, 178

Review

When can be made, 458

Right to Constitutional remedies*See writs*, 318

Object and effect of Article 32, 318

Revenue proceedings

Are civil proceedings 390

Revocation of leave

Leave can be revoked 426

Leave obtained in violation of mandatory provisions can be
revoked, 426Leave cannot be revoked if the parties are left remedyless
427**Revolution**

Restriction on the basis of, 258

Right to appeal

When commences, 392

Rotational system

Is legal, 163

What is 179

Rule making power

Of Supreme Courts, 459

Rules of business

Allocation can be made in advance, 337

Rules of interpretation*See Interpretation***Second Appeals**

Interference when to be made, 431

Security of State

What is,

Interest of,

*See Reasonable Restrictions***Sedition**

What is 187

Seditious publication, 189

Restriction on ground of, 258

Seditious publication

Reason to be given, 189

Book of science, if covered 189

Seizure

Illegal, if acquisition, 313

Separation of powers

If applicable in India, 331

Sentence

Interference in matters of sentence, 454

Criminal appeals when abate, 455

Appeal against jury, verdict scope of interference narrow 455

Conviction based on circumstantial evidence, 455

Religious denomination or section thereof, 306
 Matters of religion, 306
 Right to administer property in accordance with law, 307
 Freedom as to payment of taxes for promotion of any particular religion, 307
 Protection of cultural and educational rights of minorities, 307
 Articles 15 and 29, 307
 Discrimination as to admission to educational institutions, 308
 Minority Community, 308

Remand

Is not a final order, 393
 In writ proceedings, 487
 Real controversy not appreciated case remanded, 448
 Allegation of malafide cannot be made for the first time in special leave application, 449

Remoteness

Of restriction, 249

Removed

Meaning of, 527

Repeal

Applies to pending proceeding, 47
 Repealing Act repealed by another Act, Effect, 45
 Illustration, 45
 Repugnancy, 46
 State how far bound, 46
 Severability, 46
 Rule of beneficial construction, 46
 Section may be prospective, 47
 Limitation, 47
 Sub-sections, 47
 Of temporary Acts, 126
 Repealing statute, 534

Repugnancy

What is, 46

Resignation

Article 311 is not applicable, 523

Resjudicata

Relevancy in writs, 468
 Constructive res-judicata, 469
 Decision on merits operates as, 470

Retirement

Minimum age should be fixed, 523

Retracted confession

And article 20, 279

Retrospectivity

Amending Act when retrospective, 38
 Retrospective effect, 39
 Vested rights can be affected retrospectively expressly, 39
 Taxation laws, 317
 What is, 127

Residence

See freedom of movement

- What is, 486
- When insisted, 480
- Stare decisis
 - Doctrine of, 135
- State
 - Includes legislature, 118
 - Includes income tax department, 118
 - If includes judiciary, 118
 - And government, 136
 - Includes Union territory, 106
- State executive
 - See Union executive also
 - State Government, meaning of, 336
 - State can invoke inherent power under section 561 Cr P. C. 336
 - Delegation of power should be harmonious, 337
 - Allocation of business can be made in advance, 337
 - Order of detention should be in writing, 338
 - Advice given by Council of Minister is privileged, 338
 - Executive action under Article 163 to be in the name of the Governor, 339
 - Order passed under article 166, when can be challenged, 339
 - Presumption will be that the order is valid, 340
 - Order under article 166 should be communicated, 340
 - Chief Minister can pass an order regarding any portfolio, 341
 - Review petition must be referred to governor in case it is to be rejected, 341
 - Order making compulsory retirement not to be put before Governor or Chief Minister if not by way of penalty, 341
 - Order under article 166 defective, burden of proof that it was properly passed is on Government, 342
 - Power to dismiss is outside the scope of Article 154, 342
 - State executive, how works, 343
 - Difference between a Minister and Secretary of a department 343
 - Minister not part of the department, 344
 - Executive decision and its formal expression, 344
 - Articles 166, is directory, 344
 - Expressed to be made, meaning of 345
 - Who should communicate the orders, 345
 - Power under Article 161 to give pardon and power of Supreme Court under 142 to suspend sentence compared with power of judicial committee, 345
 - Appeal pending in Supreme Court, action cannot be taken under article, 161
 - Ex. Maharajas have no power to grant pardon after the enforcement of Constitution, 347
- State Legislature
 - (See Union Legislature)
- Statement of case
 - Case not made out 435
 - Point not taken, effect, 400

Severability

When applicable, 46

Shall

Use of, 30

When mandatory, 30

Show cause

What is, 519

Slaughter

See Directive principles

Social Justice

Who is, 99

Sovereign

What is, 98

Sovereignty

Restriction on ground of, 251

Special courts

Legality of, 158

Special leave

Similar decisions not challenged, becomes final but does not bar the Court to hear other cases, 436

Stale matters, 436

Order passed with in jurisdiction, Court should be slow to interfere, 438

Adjournment not granted, article 136 if apply, 436

Delay in making applications for special leave not to be condoned ex parte, 449

Hypothetical question not to be decided, 419

Misdescription in the heading of special leave, is not fatal, 37

Order without jurisdiction cannot be sustained, 431

Leave of High Court should be obtained before asking special, leave delay to be explained, 438

Certificate may not be obtained if the practice of the High Court so permits, 438

Allegations made by affidavits, Court not to interfere with findings, 438

Costs, 439

Question of jurisdiction when can be raised, 439

Discretion exercised by Courts below not to be interfered with, 439

Technical defects, respondent not properly described does not make an appeal incompetent, 439

Order made on a question of law under article 226 not taken to Supreme Court, case tried on merits, award given, matters settled under article 226 become final, 440

Party obtaining decree for divorce from High Court should not remarry till the period for special leave expires, 440

Speeches

Made in Parliament, if relevant, 22

Spirit of Constitution

Is irrelevant, 11, 121, 129

Stale matters

Court not to interfere, 436

Standard of reason

- Special leave
- Remand
- Revocation
- Writs
- Court of Record, meaning, 380
- Contempt of Court, 381
- Cases of professional misconduct, 456
- Case under Corruptions Act, 457
- Review, 458
- Advisory jurisdiction, 459
- Rule making power, 459
- Binding Nature of decision, 460
- Suspend
 - High Court can, 523
 - What is, 240
- Suspension
 - What is, 516
 - Retrospective, 516
 - During leave, 516
- Taxability
 - Question not to be raised in writs, 474
- Taxation laws
 - Constitutionality of, 167
 - If retrospective, 317
 - Taxing statutes, 31
 - Fiscal statutes should be express and clear, 31
 - Taxing statutes should be liberally construed, 32
 - Construction leading to evasion of tax to be avoided,
 - Conduct of tax payer how far relevant in the matter of interpretation, 32
 - No equity in favour of taxing statute, 33
 - Interpretation to be in favour of citizens, 33
- Taxis
 - Introduction of small taxis, 230
- Three tier System
 - Is legal, 162
 - What is, 245
- Temporary deprivation
 - not illegal, 162, 216
- Temporary statute
 - effect of expiry, 534
- Tenders
 - acceptance and rejection of, 230,
 - May not be accepted, 176
- Territorial jurisdiction
 - What is, 487
- Territory
 - (See Indian Territory)
 - Meaning of, 102
 - Of India, 105

Stay

When to be granted, 401

Stealthy Encroachment

doctrine of, 135

Stigma

What is, 517

Strikes

If protected, 189

And freedom of Speech, 189

Right to, 196

Subjective opinion

What is, 126

Subjective satisfaction

What is, 246

Sub Judges

Arbitrary selection, 160

Subordinate legislation

Power to validate, 554

*(See Delegated Legislation)***Subsidy**

Provision relating to, 229

Subsistence allowance

Non payment of, 526

Sub-sections

Construction of, 47

Substantial questions

As to interpretation of Constitution, 384

Scope for difference does not constitute, 384

Substantive reasonableness

What is, 243

Subversive activity

What is, 165

Summary dismissal

No ground for giving certificate, 405

Superintendence, power of, High Court

Scope of Article 227, 581

Discretion under Article 227 not properly exercised, Supreme

Court may interfere, 501

Unlawful Dispossession, High Court can interfere under

Article 227, 501

Tribunal meaning of, 501

Tribunal cannot ignore the judgment of High Court, 502

Article 227 does not confer appellate jurisdiction, 502

Scope of article 32, 502

Supreme Court*See also—*Appeals

Discretion

Finding of fact

Leave

New point

Original jurisdiction

Question of fact

Question of law

- Freedom of press does not confer on it the right to commit breach of the privileges of the House, 355
- Law made under Article 194(3) is subject to Article 13 (2), 355
- Legislatures not Court of record, 356
- Judge of High Court can entertain petition challenging an order of Legislature imposing penalty, 356
- Contempt of House, penalty to be imposed after hearing the parties 356
- Right of an advocate to assist the client is un-controlled, by Article 194, 357
- Bill pending when lapses on prorogation, 363
- Scope of Article 196 Clause 5, Bill do not lapse if assent of President or Governor is not given, 363
- President or Governor not bound to give assent within any specified time, 364
- Bill sent back with a message by President or Governor can be considered by new House, 364
- Bill pending in council but passed by Assembly does not lapse, 365
- Money bill, Municipal Taxation does not fall within the term, 365
- Office of profit, how established, 366
- Irregularity in procedure of legislature, effect, 368
- Disqualification incurred before election not covered by article 191, 369
- Scope of power of Election Commission under article 192, 369
- Who can raise the question of disqualification, 370
- Modification under Article 370, extent of power of President, 371
- Filling the seats, meaning of, 371
- Article 19(1) must yield to Article 196, 357
- Deprivation of personal liberty under Article 195 is unconstitutional, 358
- Court cannot regulate the procedure of House, 358
- At any time, rule 21, meaning of, 358
- Effect of expunging, the remark, 358
- Court not to judge whether contempt is committed or not 259
- Right to move Court in case of violation of articles 20 and 21 not barred, 359
- Allegation of malafides in privilege proceedings, 359
- Power to punish for contempt should be exercised of carefully 360
- 'Dissolution' and 'Prorogation' English practice cannot be availed in India, 360
- Power to issue general warrant, 362
- 'Prorogation and Dissolution under Indian Constitution does not dissolve upper House, 362
- Union Territory,
included in the term state, 106
- Valuation
Test of, 392

Tier System

What is, 179

Title

When relevant, 25

Disputed, writ does not lie, 489

Total Prohibition

See Directive principles

Trade

See *Freedom of Trade*

What is, 266

Occupation, 226

Trade Unionism

legality of, 196

Tribunal

See *Court*

Court and Tribunal

Administrative Bodies

Natural Justice

Malafide

Meaning of, 502

Cannot ignore the Judgment of High Court, 502

Unions

Classification of, 168

Union Executive

Executive power, defined, 329

Theory of Separation of power does not exist, 331

Election of President and Vice President, how challenged, 331

Word 'Election' used in Article 71 means the whole election, 331

Executive, Legislative and judicial Function, explained, 332

President cannot delegate powers which are invested in him as President, 333

President can delegate only executive power, 333

Validity of orders passed under Article 77, when can be questioned, 334, 336

Union Legislatures

Union Legislature, 349

State Legislatures, 349

Scope of Articles 105 and 194, 350

Article 19(1)(a) does not govern Article 194, 350

Freedom of speech is absolute and unfettered, 351

Powers and privileges of Legislatures are the same as these are of House of Commons, 351

Power and privileges of House of Commons should subsist on 26th January 1950 and should be so recognised by English Courts, 352

Rules made by Legislature are subject to Part III, 352

Law prescribing powers and privileges if subject to Article 13, 352

Power to prohibit publication of inaccurate report, 353

Power to prohibit publication of inaccurate report, 353

Parliamentary privilege, Defined, 354

- Point not in issue should not be decided, 490
- Alternate relief can be claimed, 490
- Judge should not be a party to the cause, 490
- Bias Point should be taken in petition, 491

Article 32

- Scope of Article 32, 502
- Relief granted under article 32 when there was dispute regarding the validity of a regulation, 502
- Article—32—"Any Court"—Meaning of, 502
- Articles 226 and 32, compared, 503
- Order passed by High Court cannot be challenged, 503
- Procedure ultravires, Article 32 may be invoked, 503
- Infringement by private parties 503
- Contractual rights not covered, 503
- Declaratory order can be made under Article 32, 504
- Adequate remedy under article 32, 505
- Article 32 does not take away the Right of ordinary court to adjudicate, 506
- Breach of law is not a ground for invoking Article 32, 506
- Threat of recovery of tax, Article 32 is applicable, 506
- Writ petition dismissed in High Court, Supreme Court may interfere under article 32 if fundamental rights involved, 507
- Article 136 cannot be circumvented by restoring to Article 32, 507
- Intervener has no right to reply, 507
- Petitioner to be kept strictly within pleading, 507
- Misconstruction of a statute cannot be challenged under article 32, 513
- Writ can be filed when the fundamental right is violated or when there is a threat of violation, 508
- Writ lies only if there is infringement of Article 32, 509
- Act of legislature nullifying the decision under Article 32 is legal, 509
- Appropriate proceeding, meaning of, 512
- Executive order passed on subjective satisfaction not liable to be quashed in writs, 510
- Question of fact and Article 32, 511
- Taxing authority entitled to act judicially no violation of fundamental rights, 512
- Taxing law when can be challenged under article 32, 512

Certiorari

- Scope of, certiorari, 476
- Manifest error apparent on the face of record, 477
- Executive instructions, breach of writ, of certiorari does not lie, 478
- Statutory rules and executive directions, distinction, 479
- Quasi judicial and Administrative bodies, 479
- Authorities can interfere only under express provision of law 481
- Mere erroneous decision, if enough to issue certiorari, 481
- All reasons not set out, no ground for certiorari, 482

- Variance
 - What is, 392
- Vexatious litigants
 - Constitute a class, 148
- Void laws
 - Can be made good, 120
 - Can be applied to non-citizens, 120
 - Article 31, 120
- Waiver
 - Fundamental right cannot be waived, 119, 167
- War
 - Restriction on the basis of, 258
- War Diaries
 - If admissible, 413
- War time Legislation
 - War time legislation to be construed in favour of the State, 36
- Who can enforce
 - Only citizens can enforce, 120
- Words and phrases
 - See *Definitions*
- Writs
 - Scope of Article 226, 465
 - Property whether public or private, question cannot be raised is writ proceedings, 466
 - Alternate Remedy if bars a writ, 466
 - Interlocutory orders, 467
 - Interim order should not be passed on a holiday, 468
 - Resjudicata in writ proceedings, 469
 - Constructive Res judicata, 469
 - Decision on merits under Article 32 and 226 operate as Res judicata in Suits, 470
 - Scheme settled by Court for the administration of religious property can be challenged in writ proceedings, 471
 - Decision given under Article 226 based on assumption can be set aside, 471
 - Dispossession ordered by executive fiat, writ will lie, 471
 - Final order to be challenged in writ proceeding, writ cannot be issued to original authorities, 471
 - High Court should not encourage circumvention of ordinary procedure in writs, 473
 - Various assessment orders challenged in one writ, one court fee is enough in appeal to Supreme Court, 473
 - Contempt proceedings in a legislature can be challenged, 473
 - Manifest injustice should be shown, 473
 - Question of Taxability should not be decided under Article 226, 474
 - Territorial jurisdiction, 487
 - Final order decision under article is final order, 488
 - A Person whose Fundamental Rights have not been violated may also file a writ, 488
 - Permit not in existence writ will not lie, 489
 - Disputed title writ cannot be filed, 489

- Existence of Lis, dispute is judicial or quasi judicial, 482
 High Court not to act as court of appeal, while issuing certiorari, 482
 Rules made by governor will apply to quasi judicial acts, 483
 Quasi judicial bodies how to function, 484
 Quasi judicial Act, 484
 Standard of reasons, 486
 Point not raised in petition normally cannot be urged but was allowed to be urged in this case, 486
 Quasi judicial body should give bearing and reasons, 486
 Administrative Tribunal and Court, 487
 High Court should not correct the error but should remand the Case, 487
 Order confirming sale is a judicial order, 474
 Sufficiency of evidence cannot be gone into, 475
 Writ not to be granted if there is breach of only contractual obligation, 475
 Consequential relief can be given, 475
 Delay and Limitation, period prescribed under Limitation Act can be taken as a guide, 475
 Records should be before the Courts, 497
- Habeas Corpus*
 Person under detention if not produced in court when so ordered, contempt proceeding may be launched, 498
 Writ will issue if a person is detained without authority of law, 498
 Detention order is an executive order, 498
- Mandamus*
 Writ of mandamus can be issued when there is breach of some statutory duty, 499
 Liability arising out of breach of Contract, 499
 Tax illegally recovered, Mandamus can be issued for refund, 499
 Some instances, 500
- Prohibition*
 Writ of prohibition, scope of, 497
 Question of jurisdiction not involved writ of prohibition may not be issued, 497
 Purpose of, 497
- Quo warranto*
 What is, 499
 When issued, 499